Report of the

NORTH CAROLINA LOCAL GOVERNMENT STUDY COMMISSION

Raleigh/1969

INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA
AT CHAPEL HILL

REPORT

OF THE

LOCAL GOVERNMENT STUDY COMMISSION

1968

To

The Governor of North Carolina

and

The General Assembly of 1969

Raleigh

1969

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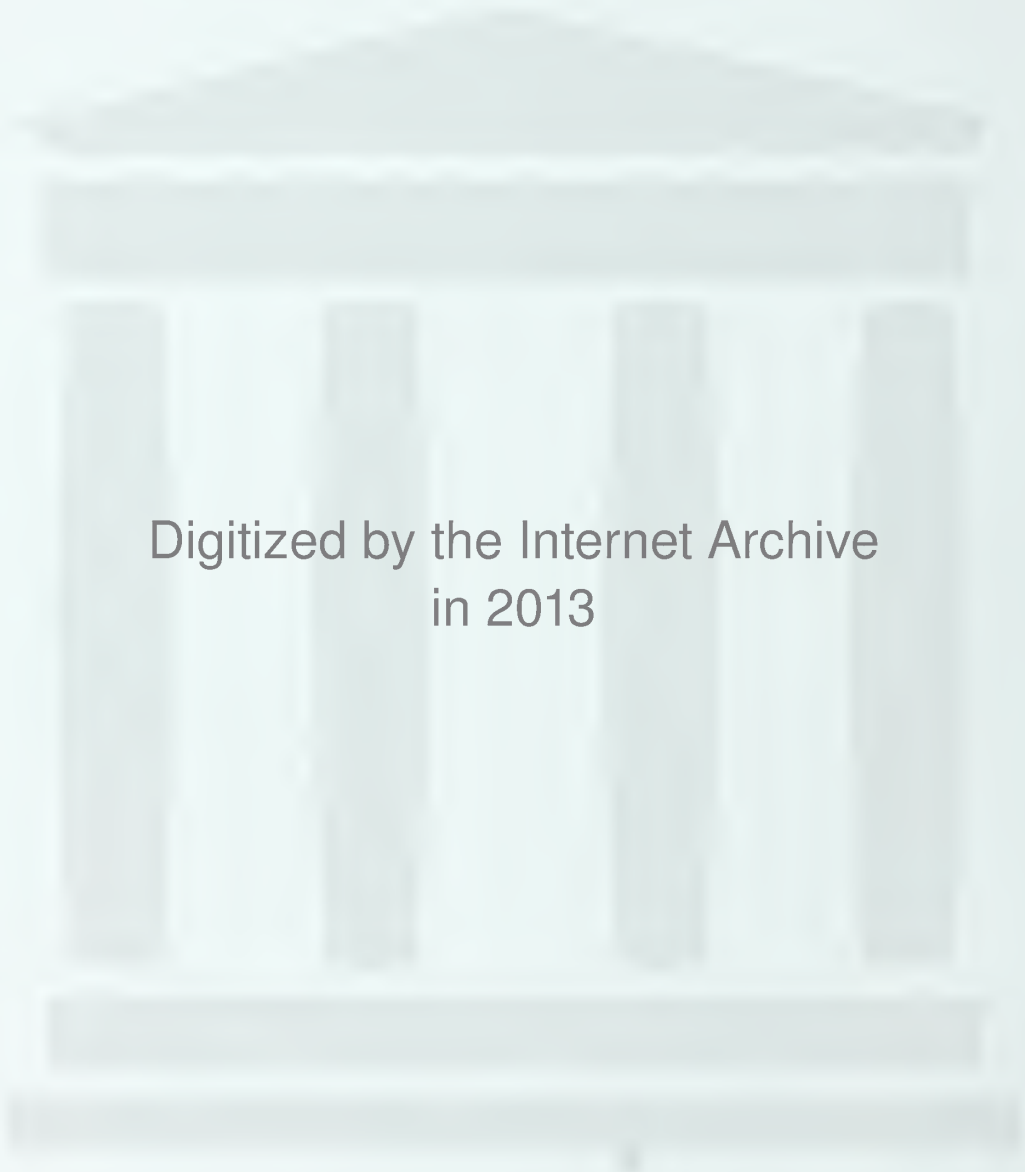

RESOLUTION CREATING THE COMMISSION

Session Laws of 1967 Resolution 76 (H.R. 944)

A JOINT RESOLUTION TO ESTABLISH THE LOCAL GOVERNMENT STUDY COMMISSION

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. There is hereby established the Local Government Study Commission. The Commission shall consist of three Senators appointed by the President of the Senate, six Representatives appointed by the Speaker of the House of Representatives, and six citizens appointed by the Governor. The Chairman of the Commission shall be elected by the members of the Commission from among their number. The Commission may also elect such other officers as it deems necessary.

Sec. 2. The members of the Commission shall be appointed on July 1, 1967, or as soon thereafter as is practicable, and shall serve until the report of the Commission is filed with the Governor.

Sec. 3. It shall be the duty of the Commission to make a thorough study of the governmental structure, powers, public policies, duties, and limitations of counties, cities, towns, and other local governmental units in this State as prescribed by the Constitution and laws of the State, and to make such recommendations for amendments to or revisions of the Constitution and statutes pertaining to local government as the Commission shall find most conducive to the maintenance of effective and responsible local government in North Carolina. The Commission may assign portions of its work to such subcommittees as the Commission may in its discretion establish. The Commission shall give particular attention: (1) to a study of methods and procedures to reduce the volume of local legislation requiring the time and attention of the General Assembly; (2) to a study of possible

changes in the organization and administration of county government which would realize the full potential of county government as an instrument for providing general purpose, area, and regional, local governmental services; (3) to a study of the impact of urbanization on municipal governments and their capability for furnishing a full range of public services and facilities for the expanding urban areas of this State; and (4) to a study of the purpose, function and role of special districts, multi-unit and regional Boards, Commissions, and other special purpose local government units in relation to the general purpose municipal and county governments. The Commission shall report its findings and recommendations to the Governor and to the General Assembly of 1969 and shall make publication of same not later than January 1, 1969.

Sec. 4. The members of the Commission shall receive while engaged in the service of the State per diem, travel, and subsistence allowances at the rates prescribed in G.S. 138-5. The Commission may employ such assistance and procure such materials and services as it deems necessary to the performance of its duties. The Commission is authorized to accept and expend the proceeds of any gift, donation, or grant from any person, firm, corporation, foundation or governmental agency. The expenses of the Commission shall be paid from the Contingency and Emergency Fund pursuant to the procedure prescribed in G.S. 143-12 and any other funds available to the Commission. Every agency of State, county, and municipal government shall provide the Commission with such information and assistance as shall be requested by the Commission, as provided under Chapter 120 of the General Statutes of North Carolina.

Sec. 5. This Resolution shall take effect upon its ratification.

In the General Assembly read three times and ratified, this the 30th day of June, 1967.

MEMBERS OF THE COMMISSION

Appointed by the President of the Senate

Senator Jack H. White of Cleveland (29th District)

Senator J. J. Harrington of Bertie (1st District)

Senator Leroy G. Simmons of Duplin (10th District)

Appointed by the Speaker of the House of Representatives

Representative Roberts H. Jernigan, Jr., of Hertford (6th District)

Representative Robert Z. Falls of Cleveland (43rd District)

Representative Julian W. Fenner of Nash (14th District)

Representative Herschel S. Harkins of Buncombe (45th District)

Representative James R. Sugg of Craven (3rd District)

Representative Samuel H. Johnson of Wake (19th District)

Appointed by the Governor

Mr. Forrest Lockey
Aberdeen & Rockfish Railroad

Dr. Robert S. Rankin
Duke University

Mr. Frank Holding
Johnston County Commissioner

The Honorable M. C. Benton, Jr.
Mayor of Winston-Salem

Senator Thomas R. Bryan, Sr., of Wilkes (25th District)

Mr. J. Weldon Weir
Former City Manager of Asheville

SUB-COMMITTEE ON STATE LEVEL ACTION FOR LOCAL GOVERNMENT

Dr. C. E. Bishop, Chairman
University of North Carolina

Senator Jack H. White
Co-Chairman of the Commission

Representative Samuel H. Johnson
Co-Chairman of the Commission

Representative Julian B. Fenner
Secretary of the Commission

Mr. John T. Morrisey, Sr.
N. C. Association of County Commissioners

Mr. Ernest H. Ball
N. C. League of Municipalities

Mr. George Monaghan
Division of Community Planning

Mr. John R. Hampton
State Planning Task Force

Mr. Marion Ellis
The Charlotte Observer

Consultants

Mr. John L. Sanders
Institute of Government

Mr. Joseph S. Ferrell
Institute of Government

Mr. Philip P. Green, Jr.
Institute of Government

SUB-COMMITTEE ON LOCAL LEGISLATION

Senator Herman A. Moore of Mecklenburg

Senator Jack H. White of Cleveland

Representative Julian B. Fenner of Nash

Representative Hugh Johnson of Duplin

Representative Samuel H. Johnson of Wake

Mr. John T. Morrisey, Sr.
N. C. Association of County Commissioners

Mr. Ernest H. Ball
N. C. League of Municipalities

Consultant

Mr. Joseph S. Ferrell
Institute of Government

I

THE WORK OF THE COMMISSION

I

THE WORK OF THE COMMISSION

This Commission was created by the 1967 General Assembly to study the whole structure and functioning of local government in North Carolina and to make recommendations for strengthening city and county governments. The Commission was directed to report its findings and recommendations to the Governor and the 1969 General Assembly.

Study commissions are usually created to focus intensive study on a broad or difficult problem which cannot be effectively examined and resolved in the normal legislative process, or to provide a vehicle for the expression of fresh ideas on a complex subject. The ideal study commission would do both these things. Commissions have the time to gather facts, analyze them without distraction from other issues, and make recommendations which have been thoughtfully formulated and carefully drafted.

The comprehensive study of local government is particularly suited to the study commission technique because of magnitude and complexity of the subject.

There have been local governments in North Carolina since the foundation of the colony, but our present local governmental institutions were fired in the crucible of the last quarter of the nineteenth century. The Constitution of 1868 set up a system of county and township government modeled after the local government system of Ohio, but the Constitutional Convention of 1875 restored much of the status quo ante bellum. Thirty years of political unrest followed

the Convention until the basic features of our present system of county government were enacted in 1905 by the Conservative Democratic regime which came into power in 1901. There has been no comprehensive, systematic reconsideration of the basic statutes and constitutional provisions concerning county government since that time.

The Constitution does not (and never did) spell out the structure or functions of cities, but simply directs the General Assembly to "provide for the organization of cities, towns, and incorporated villages" and to regulate their taxing and borrowing powers. City government was little affected by the political upheavals of the nineteenth century, most probably because there were no major cities in the State. An indication of the relative unconcern for municipal matters is the passage of a constitutional amendment in 1915 which was thought to prohibit local legislation for cities. As a direct result of this prohibition against local legislation, the 1917 General Assembly enacted the present municipal corporations act, engrafting it upon an earlier 1852 statute, and it has not been comprehensively revised since that time.

Thus, the basic laws setting up city and county government in North Carolina were drawn up in 1905 and 1917. The constitutional provisions regulating their fiscal affairs date from 1868.

During the last half century, American life has undergone vast change. North Carolina has passed by gradual stages from a rural people to a people living or working in cities and towns. While the State has no metropolitan area comparable to those of the industrial

northeast or the west coast, there are over 100 cities whose population exceeds 2,500 and four Standard Metropolitan Statistical Areas in the State. Many statistics could be cited to demonstrate this change, but one in particular is startling to those who cling to the conception of North Carolina as a rural state: in 1966 only one-fourth of the assessed valuation of property in the State of North Carolina was attributable to farm land. While this statistic is undoubtedly low due to the fact that farm land is not appraised at the same level as other property in some counties, it is nevertheless a very low percentage for a state whose population was classified as just under 50% rural by the 1960 census.

The fundamental changes in the way of life of the people indicated by the statistics have been reflected in the demands they make on their State and local governments. By and large, the General Assembly and the local governments have responded to these demands as best they could.

But the General Assembly is beset by many, many demands for legislative action at each session. Because of its limited time and staff resources it naturally tends to deal with specific problems as they arise. There is little or no time to consider each new problem and its suggested solution in a broad context and to see how it relates to the overall role of local government in an increasingly complex web of federal, State and local interaction.

Not to be overlooked in North Carolina is the major role placed by local acts of the General Assembly. Very few states even approach

our reliance on local legislation in adapting individual local governments to changing conditions. Typically, two-thirds of the acts of a session of the General Assembly are local acts.

As a result of the tendency of the General Assembly to deal with narrow issues and its reliance on local legislation, there are literally hundreds of general statutes and thousands of local acts, adopted at widely varying times, creating, empowering, and regulating local government in North Carolina. Many of these acts conflict with each other, some of them are obsolete, and all of them need to be reviewed as a part of a whole rather than as individual solutions to individual problems.

Confronted with so vast a field of inquiry, we decided at our first meeting to request assistance from the Institute of Government and to hold public hearings throughout the State in order to determine what specific topics we could investigate during the time available to us. We held seven public hearings attended by several hundred city, county and State officials and interested citizens. We received extensive briefings from staff members of the Institute of Government. We had the able and enthusiastic assistance of the Association of County Commissioners and the League of Municipalities throughout our study. After these briefings, hearings, and more than a dozen meetings of the full Commission and two separate study committees drawing on persons outside our Commission, we determined that it would be necessary to fix priorities for our Report to the Governor and 1969 General Assembly.

Accordingly, we will make recommendations in this Report on three major subjects: (1) constitutional reform; (2) a State agency for local affairs; and (3) means and procedures to reduce the volume of local legislation in the General Assembly. We will also recommend the continuation of the Commission. A summary of our recommendations follows.

SUMMARY OF RECOMMENDATIONS

I. Constitutional Amendments

- 1. The poll tax should be abolished.
- 2. The General Assembly should have authority to vary local revenue structures except that the property tax should remain uniform throughout the State.
- 3. Local government should have authority to establish subordinate service districts for the provision of additional or supplemental services financed by taxes levied only in the area served.
- 4. The General Assembly should have authority to determine on a State-wide basis what functions may be financed with non-voted property taxes.
- 5. The authority of local governments to cooperate with private enterprise in the accomplishment of public purposes should be clarified.
- 6. Local legislation on debt matters should be prohibited.
- 7. Local government should have authority to borrow in anticipation of the taxes of the next succeeding fiscal year to an amount not exceeding 50 per cent of such taxes.
- 8. Local government should have authority to borrow without a vote of the people to meet emergencies threatening the public health or safety.

► 9. The General Assembly should have authority to determine what contracts other than contracts creating general obligation debt must be submitted to popular vote.

► 10. The extent of the authority of local governments to lend their credit in aid of private parties should be specified in the Constitution.

► 11. The 20¢ limitation on county tax rates should be repealed.

II. State and Regional Planning and State Technical Assistance to Local Government

► 1. The State Planning Task Force should be renamed the Division of State and Regional Planning; it should be given funds commensurate with its responsibilities, and it should be assigned the following activities:

(a) to develop and recommend to the Governor a statement of long-range goals for the development of the State;

(b) to analyze alternative policies for fulfilling the State's long-range goals and to advise the Governor and the General Assembly concerning the implications of policies and programs proposed or adopted;

(c) to prepare and revise periodically comprehensive plans for implementing the State's policies as defined by the Governor and the General Assembly, including capital improvement budgeting as a means of effectuating such plans;

(d) to provide assistance, guidance, and coordination to other State agencies in their preparation of development plans and programs, and to review all such plans of State agencies for consistency with over-all State plans and policies;

(e) to coordinate those phases of multi-state regional development commission programs relating to North Carolina;

(f) to assist the counties and municipalities of the State in the delineation of multi-county development districts, the establishment of regional planning and economic development agencies for such districts, and the preparation of coordinated long-range development programs involving both State and local activities; and to coordinate the administrative districts of the various State agencies with the multi-county development districts;

(g) to develop a data bank of information for use of State and local governmental agencies and the general public.

► 2. There should be an Advisory Council on Planning and Development to advise the Governor and the Division of State and Regional Planning on the development and implementation of long-range goals for the State. The Council should be composed of from 12 to 15 highly competent citizens not directly involved in State government appointed by the Governor for definite, overlapping terms. The Council should be required to meet and report to the Governor at least quarterly.

► 3. The Governor should report to each regular session of the General Assembly on the State's progress toward fulfilling its long-range plans.

► 4. To provide an incentive for local governments to participate in regional planning efforts, the General Assembly should appropriate sufficient funds for a grant program to regional planning and economic development commissions. The grant program should be administered by the Division of State and Regional Planning, which should have authority to condition State funding on criteria that will encourage local creation and local funding of rational, viable regions.

► 5. There should be created a new division within the Department of Administration entitled the Division of Local Governmental Services, with the following responsibilities:

(a) to provide professional planning and managerial assistance, and similar services to local government, on a contract basis or without charge, through resident staff, regional offices, or centrally, as seems most appropriate;

(b) to assist local governments in evaluating various federal and State grant programs; to refer them to appropriate State agencies for assistance in making applications for such grants, and where there is no such agency, to provide such assistance itself;

(c) to serve as a central reference point for directing local governments to sources of assistance within the various State departments and agencies;

(d) to assist the Governor in coordinating and evaluating programs of other State departments and agencies which have impact on local government.

► 6. The Division of Local Governmental Services should be given funds adequate to offer a full range of technical assistance in the fields of planning, managerial assistance, and federal grant assistance.

► 7. The Division of Community Planning of the Department of Conservation and Development should be transferred to the Division of Local Governmental Services and become its nucleus.

► 8. The Local Government Commission should be given increased appropriations in order to offer a full range of technical assistance in accounting systems and financial matters. Its offices should

be physically located as near as possible to the offices of the Divisions of State and Regional Planning and Local Governmental Services in order to facilitate and encourage close working relationships among these three agencies.

III. Local Legislation

► 1. Constitutional restraints on the power of the General Assembly to enact local legislation should be limited to subjects for which there are sound reasons of State policy to require uniform legislation; the Constitution should not attempt to reduce the volume of local legislation solely to make the legislative process more efficient.

► 2. Local governments must be given and encouraged to accept authority to regulate local affairs without the benefit or interference of local legislation except (a) where authority is sought to undertake programs or procedures not provided for by general law on an experimental basis; (b) where there are sound reasons of policy for retaining legislative control over a particular subject matter on a case by case basis.

► 3. All local exemptions from permissive general laws should be repealed.

► 4. Legislation should be adopted authorizing the several counties, cities and towns of the State to modify the composition and mode of election of the governing bodies of these units within clearly defined optional forms.

► 5. All local acts fixing the salaries, fees, and allowances of local officials should be repealed and authority should be given to local

governing boards to fix local salaries, fees, and allowances, including the power to fix the per diem and allowances of the governing board itself.

- 6. Counties should be given the power to enact ordinances, and violation of county ordinances should be made a misdemeanor.
- 7. The General Statutes relating to local government should be revised and recodified.
- 8. Register of Deeds' fees should be made uniform throughout the State.
- 9. The Constitution should be amended to forestall any question that the General Assembly may delegate legislative power to local governments.
- 10. All local legislation and all public legislation relating to local government introduced in the General Assembly should be handled by a single committee in each house sitting in sub-committees; the Local Government Committee in each house should perform this function and other committees handling primarily local bills should be abolished.
- 11. Each Local Government Committee should have a staff attorney.

IV. Continuation of the Commission

- 1. The Local Government Study Commission should be continued for another biennium.

II

CONSTITUTIONAL AMENDMENTS

II

CONSTITUTIONAL AMENDMENTS

Most of the constitutional provisions relating to local government are found in Articles V and VII. Although Article VII sets out a form of county government, the General Assembly has authority to alter this at will except for the election of a Sheriff in each county, and often has. Article VII should be revised, and the State Constitution Study Commission has recommended a revision which will be presented to the 1969 General Assembly. We endorse their recommendations.

Article V of the Constitution regulates the power of the General Assembly to authorize local governments to levy taxes and contract debts. These provisions date originally from 1868 and have been amended several times since then. Several features of Article V are now obsolete and others raise obstacles to new ways of organizing and financing local government. Since the Constitution fixes limits on legislative authority, we conclude that the Constitution should be revised to retain those limitations of fundamental and lasting importance and to remove obsolete and unnecessary matter before this Commission or another group undertakes in-depth studies of the structure of local government in this State. For this reason, we have placed constitutional reform at the top of our list of recommendations and strongly urge that our recommendations for constitutional amendment be given high priority by the General Assembly.

We were fortunate in our study of the Constitution to have the opportunity of working closely with the State Constitution Study Commission. Representative Roberts Jernigan of our Commission was

also a member of that Commission, as was Mr. John T. Morrisey of the Association of County Commissioners, who worked with us throughout our study. We were thus able to establish close liaison with the State Constitution Study Commission and have endeavored to arrive at a revised Article V which that Commission could endorse in principle. They have done so and our recommended revision of Article V appears as Appendix 3 in their Report.

A full text of Article V as we recommend that it be amended follows with an explanatory comment after each section or sub-section. In summary, our recommendations are as follows:

1. THE POLL TAX SHOULD BE ABOLISHED.

2. THE GENERAL ASSEMBLY SHOULD HAVE AUTHORITY TO VARY LOCAL REVENUE STRUCTURES EXCEPT THAT THE PROPERTY TAX SHOULD REMAIN UNIFORM THROUGHOUT THE STATE.

3. LOCAL GOVERNMENT SHOULD HAVE AUTHORITY TO ESTABLISH SUBORDINATE SERVICE DISTRICTS FOR THE PROVISION OF ADDITIONAL OR SUPPLEMENTAL SERVICES FINANCED BY TAXES LEVIED ONLY IN THE AREA SERVED.

4. THE GENERAL ASSEMBLY SHOULD HAVE AUTHORITY TO DETERMINE ON A STATE-WIDE BASIS WHAT FUNCTIONS MAY BE FINANCED WITH NON-VOTED PROPERTY TAXES.

5. THE AUTHORITY OF LOCAL GOVERNMENTS TO COOPERATE WITH PRIVATE ENTERPRISE IN THE ACCOMPLISHMENT OF PUBLIC PURPOSES SHOULD BE CLARIFIED.

6. LOCAL LEGISLATION ON DEBT MATTERS SHOULD BE PROHIBITED.

7. LOCAL GOVERNMENT SHOULD HAVE AUTHORITY TO BORROW IN ANTICIPATION OF THE TAXES OF THE NEXT SUCCEEDING FISCAL YEAR TO AN AMOUNT NOT EXCEEDING 50 PER CENT OF SUCH TAXES.

8. LOCAL GOVERNMENT SHOULD HAVE AUTHORITY TO BORROW WITHOUT A VOTE OF THE PEOPLE TO MEET EMERGENCIES THREATENING THE PUBLIC HEALTH OR SAFETY.

9. THE GENERAL ASSEMBLY SHOULD HAVE AUTHORITY TO DETERMINE WHAT CONTRACTS, OTHER THAN CONTRACTS CREATING GENERAL OBLIGATION DEBT, MUST BE SUBMITTED TO A VOTE OF THE PEOPLE.

10. THE EXTENT OF THE AUTHORITY OF LOCAL GOVERNMENTS TO LEND THEIR CREDIT IN AID OF PRIVATE PARTIES SHOULD BE SPECIFIED IN THE CONSTITUTION.

11. THE 20¢ LIMITATION ON COUNTY TAX RATES SHOULD BE REMOVED FROM THE CONSTITUTION.

ARTICLE V

Revenue, Taxation, and Public Debt

Section 1. *No capitation tax to be levied.* No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

Comment. This Section abolishes the capitation or poll tax. In the fiscal year 1965-66, all counties and 319 cities levied poll taxes. The total of the county taxes was $1,244,536, or .7% of the total of all county revenues. The city taxes totaled $210,270, or .2% of the total of all municipal revenues. The capitation tax is therefore an insignificant source of local revenue. It is typically not collected unless the taxpayer also lists real or personal property for taxation, since the cost of collecting a $2.00 tax would exceed the tax itself. Moreover, the tax is erroneously thought by many to have some relation to the right to vote. It is a regressive and archaic tax and should be abolished.

Sec. 2. *State and local taxation.*

(1) *Power of taxation.* The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

Comment. This is the first sentence of present Art. V, § 3, without change.

(2) *Classification.* Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable

in every county, city and town, and other local taxing unit of the State.

Comment. This language is substantially the same as that of the present second and third sentences of Art. V, § 3, except for elimination of the phrase "other subjects" in two places and deletion of the present fourth sentence dealing with delegation of the classification power for local privilege license tax purposes. These provisions were rendered unnecessary by the decision of the Supreme Court in Sykes v. Clayton, 274 N.C. --- (decided October 30, 1968), which held that the classification portions of present Art. V, § 3, apply only to the property tax. This subdivision therefore makes no substantive change in the present Constitution as interpreted by the Supreme Court.

(3) *Exemptions.* Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding $300, any personal property. The General Assembly may exempt from taxation not exceeding $1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other local taxing unit of the State. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

Comment. This is present Art. V, § 5, with no substantive change.

(4) *Special tax areas.* The General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, and maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

Comment. Under the decisions of the Supreme Court in Banks v. Raleigh, 220 N.C. 35 (1941), and Anderson v. Asheville, 194 N.C. 117 (1927), there is serious doubt than any classification of property for taxation solely on the basis of services provided or the level of such services would be valid, unless the formality of creating a special service district administered by its own governing board were followed. This new paragraph specifically permits the General Assembly by general law to authorize units of local government to establish subordinate service districts without their own governing boards, and to levy taxes in the districts in order to finance services provided therein in addition to or to a greater extent than those provided throughout the unit. This paragraph would have its major application in the context of city-county merger or consolidation. The governing board of a merged or consolidated county could be empowered to define urban service districts consisting of the territory formerly included within city limits. Within the urban service districts municipal services could be continued as they were before consolidation, and additional taxes levied to finance them, but only one governing board would administer all county (or city-county) affairs. This can be accomplished under the present Constitution by creating urban service districts governed by boards appointed by the central county governing board. Thus, the new paragraph makes possible a more efficient and economical means of administering the affairs of a consolidated city-county. Another important effect of the new paragraph would be to permit counties to undertake special services to urbanized areas outside existing municipal limits without the necessity of creating a special district for the purpose. For example, a county might undertake to provide water or fire protection to selected unincorporated areas and finance the services by taxes levied only in the area served.

(5) *Purposes of property tax.* The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax be approved by a majority of the qualified voters of the unit who vote thereon.

Comment. Under Art. VII, § 6, of the present Constitution, taxes may be levied and debt incurred without a vote of the people for "necessary expenses," as that term is defined from time to time by the Supreme Court. Governmental functions which are judicially declared not to be "necessary expenses" may be financed by tax funds or borrowed money only upon voter approval. This does not seem to be a question of law for the courts but rather one of State policy more properly within the legislative domain. Accordingly, the new paragraph limits the use of non-voted property taxes to purposes "authorized by general law uniformly applicable throughout the State" rather than to "necessary expenses." The net effect of the new phraseology is to reaffirm the role of the General Assembly as the maker of State policy for the allocation of function between the State and its local governments. However, it is significant that the General Assembly is required to act by uniformly applicable laws. In proposed Sec. 8 this phrase is defined to mean laws applying to all cities, or to all counties, or to all sanitary districts, for example, but not necessarily to every unit of local government in the State. Thus, the General Assembly could allow cities to levy taxes for water and sewer purposes without a vote but deny such authority to counties. Conversely, the General Assembly might permit counties to levy taxes without a vote for hospitals and deny such authority to cities. The political and constitutional controls on the General Assembly in enacting tax bills should be sufficient to protect the people against hasty or unwise action. Under Art. II, § 14, of the Constitution, all bills authorizing the levy of taxes must be enacted by recorded roll call votes on three separate in each house. Since no local legislation would be permitted concerning authority to levy property taxes, all such bills would be public bills and thus exposed to the glare of publicity.

Another aspect of the new paragraph which differs from present Art. VII, § 6, is that only property taxes would require voter approval. Thus, privilege license taxes, marriage license taxes

and the excise stamp tax on conveyances could be used for any public purposes without voter approval. Since these taxes account for relatively minor proportions of local revenue, affect comparatively few people, and are not usually vaied in rate from year to year, there seems to be little reason to require voter approval for their use for particular functions.

(6) *Income Tax.* The rate of tax on incomes shall not in any case exceed ten per cent and there shall be allowed the following minimum exemptions, to be deducted from the amount of annual incomes: to the income-producing spouse of a married couple living together, or to a widow or widower having minor child or children, natural or adopted, not less than $2,000; to all other persons not less than $1,000; and there may be allowed other deductions, not including living expenses, so that only net incomes are taxed.

Comment. This paragraph is taken from the Revised Constitution recommended by the State Constitution Study Commission.

(7) *Contracts.* The General Assembly may enact general laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

Comment. This paragraph partially codifies in the Constitution the rule of the cases of Dennis v. Raleigh, 253 N.C. 400 (1960), and Horner v. Burlington Chamber of Commerce, 235 N.C. 77 (1952). These cases, read together, hold that local governments may make appropriations to private organizations for the accomplishment of public

purposes so long as the object of expenditure is identified and so long as the local government retains ultimate control over the disposition of public funds. The new paragraph removes any possible doubt that government may cooperate with private enterprise in the accomplishment of public purposes.

Sec. 3. *Limitations upon the increase of State debt.*

(1) *Authorized purposes; two-thirds limitation.* The General Assmelby shall have no power to contract debts which pledge the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

(a) to fund or refund a valid existing debt;

(b) to borrow in anticipation of the collection of taxes due and payable within the fiscal year, to an amount not exceeding 50 per cent of such taxes;

(c) to suppress riots or insurrections, or to repel invasions;

(d) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;

(e) to borrow money secured by a pledge of the revenues of enterprises financed by the loan;

(f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium.

Comment. In the interest of clarity, present Art. V, § 4, has been divided into two sections, one dealing with State debt and one dealing with local debt. Since we have recommended several substantive amendments to the local debt provisions, we deem it wise to recommend parallel changes in the State debt section in order that the two may complement each other.

In Vance County v. Royster, 271 N.C. 53 (1967), the Supreme Court held that a debt within the meaning of the Constitution is any enforcible contractual obligation, except bonds secured by a pledge of the revenues of public enterprises. While this decision is supported by prior cases and reaches a proper result given the language of the present Constitution, it departs substantially from what had been thought to be the intent of the Constitution: that only general obligation bonds and notes required voter approval. If a debt is to be construed as any enforcible contractual obligation, substantial interference with the efficient administration of government might result. For example, a lease of land for three years at a stated rental very probably creates a "debt" within the meaning of Vance County v. Royster. The proposed new State debt section limits the requirement of voter approval to "debts which pledge the faith and credit of the State," in other words to general obligation bonds and notes.

Two new "enumerated exceptions" to the requirement of voter approval of debt are added. Exception (d) permits the General Assembly to authorize the Governor to borrow within limits prescribed by law to meet certain emergencies. This clause would be useful in the event of a major natural disaster, civil disturbance, or war, and would permit the Governor to act swiftly to replace destroyed or damaged capital facilities which are essential to the public health or safety. An example might be a major prison riot necessitating emergency repairs for which funds could not be found without borrowing. The Governor is made the sole judge of what constitutes a threat to the public health or safety since the whole reason behind the exception is to permit swift action in real emergencies. Otherwise, a decision of the Supreme Court would be required in each instance at the insistence of bond counsel, and the resulting delay might substantially defeat the purpose of the exception.

The second new exception (subdivision (e)) codifies the rule of Williamson v. High Point, 213 N.C. 96 (1938), and other cases which hold that revenue bonds are not "debt" within the meaning of the Constitution and therefore need not be submitted to popular vote.

The existing exception allowing borrowing without a vote "to supply a casual deficit" is deleted. No satisfactory explanation of the meaning of this phrase has been advanced, it has never been used, and it seems to serve no useful purpose.

(2) *Gift or loan of credit prohibited.* The General Assembly shall have no power to give or lend the credit of the State in aid of any person,

association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

Comment. This subsection is taken from the Revised Constitution recommended by the State Constitution Study Commission.

(3) *Definitions.* A debt is incurred within the meaning of this Section when the State borrows money or incurs a contractual obligation not funded by current appropriations. A pledge of the faith and credit within the meaning of this Section is an express pledge of the taxing power or an express and unlimited pledge of the faith of the State to secure a debt. A loan of credit within the meaning of this Section occurs when the State exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation, but does not occur when the State guarantees the debts of its local governments.

Comment. The decision in Vance County v. Royster pointed up the need for precise definition of the terms "debt" and "faith and credit" in the Constitution. Since several substantive amendments to the State and local debt sections are proposed, it is thought advisable to be as precise as possible about these terms.

(4) *Certain debts barred.* The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or

issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assemblies of 1868-69 and 1869-70, unless the subject be submitted to the people of the State and be approved by a majority of all the qualified voters at a referendum held for that sole purpose.

Comment. This is present Art. I, § 6, edited but substantively unchanged. The State Constitution Study Commission recommends in its Revised Constitution that the section be transferred to Article V.

(1) *Regulation of borrowing and debt.* The General Assembly shall enact general laws relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government.

Comment. This paragraph introduces a new concept into State regulation of local government debt: there shall be no local legislation on local debt matters. All laws concerning local debt must be "general." This term is defined in proposed Sec. 8 to permit classified acts. The description of local units subject to the limitation is purposefully broad in order to prevent avoidance of the limitation by the creation of new types of local governments.

(2) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts and pledge its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon, except for the following

purposes:

(a) to fund or refund a valid existing debt;

(b) to borrow in anticipation of the collection of taxes due and payable within the fiscal year, or estimated to become due and payable within the next succeeding fiscal year, which estimate shall not exceed the actual tax levy of the current fiscal year, to an amount not exceeding 50 per cent of such taxes;

(c) to suppress riots or insurrections;

(d) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;

(e) to borrow money secured by a pledge of the revenues of enterprises financed by the loan;

(f) to enter into contracts and agreements of not more than ten years duration, which do not pledge the faith and credit of the unit, with individuals, associations, or private corporations, as authorized by general laws;

(g) to enter into contracts and agreements with any agency of the State or federal government, or any other unit of local government, as authorized by general laws;

(h) for purposes authorized by general laws uniformly applicable throughout the State, to an amount not in excess of two-thirds of the amount by which the units' outstanding indebtedness shall have been reduced during the next preceding fiscal year.

Comment. The decision in Vance County v. Royster, discussed in the comment to Sec. 3, above, raised the same problems of debt definition for local governments as for the State. These problems are resolved for local governments by retaining the Court's definition of debt, but adding specific and limited exceptions to the requirement of voter approval. The new exceptions are as follows:

1. Local units are permitted by exception (b) to borrow in anticipation of the taxes of the succeeding fiscal year, to the extent of 50% of such taxes, provided that the estimate of next year's taxes may not exceed this year's levy. This authority has been conferred by G.S. § 153-125 (counties) and § 160-410.6 (cities) for many years, limited to 5% of the levy for the current year, but has never been used because of doubtful constitutionality under the present Constitution.

2. Exception (d) allows the General Assembly to grant authority to borrow without a vote to meet emergencies immediately threatening the public health or safety. See the Comment to Sec. 3(1).

3. Exception (e) codifies the rule of Williamson v. High Point, discussed in the Comment to Sec. 3(1). It is particularly important that this exception be added to the local debt section since the definition of "debt" adopted in proposed Sec. 4(5) is broad enough to include revenue bonds.

4. Exception (f) authorizes the General Assembly to permit local governments to make contracts which create debt under the rule of Vance County v. Royster without a vote of the people subject to three conditions: (a) the contract may not exceed 10 years in duration; (b) the contract may not pledge the faith and credit of the unit, as defined in Sec. 4(5); (c) the contract must be one authorized by general law.

5. Exception (g) authorizes the General Assembly to permit local governments to make any intergovernmental contract without a vote of the people without regard to whether it pledges the faith and credit or contracts a debt within the meaning of Vance County v. Royster, provided the contract is one authorized by general law.

6. Exception (h) incorporates the debt aspect of present Art. VII, § 6 ("necessary expense") into the two-thirds limitation of the present Constitution. See the discussion of the tax aspect of Art. VII, § 6, in the Comment to Sec. 2(5).

The new section omits authority to borrow without a vote "to supply a casual deficit," and "to repel invasions."

(3) *Gift or loan of credit prohibited.* The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to give or lend its credit in aid of any person, association, or private corporation except for public purposes as authorized by general law and unless approved by a majority of the qualified voters of the unit who vote thereon.

Comment. This is a new paragraph which adds a prohibition against loans of credit to private organizations parallel to the prohibition against State loans of credit in Sec. 3(2).

(4) *Certain debts barred.* No county, city or town, or other unit of local government shall assume or pay any debt or the interest thereon contracted directly or indirectly in aid or support of rebellion or insurrection against the United States.

Comment. This is present Art. VII, § 9, recommended for transfer to Article V by the State Constitution Study Commission in its Revised Constitution.

(5) *Definitions.* A debt is incurred within the meaning of this Section when a county, city or town, special district, or other unit, authority or agency of local government borrows money or incurs a contractual obligation not funded by current appropriations. A pledge of faith and credit within the meaning of this Section is an express pledge of the taxing power or an express and unlimited pledge

of the faith of a county, city or town, special district, or other unit, authority, or agency of local government to secure a debt. A loan of credit within the meaning of this Section occurs when a county, city or town, special district, or other unit, authority, or agency of local government exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

Comment. See the Comment to Sec. 3(3).

Sec. 5. *Acts levying taxes to state objects.* Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Comment. This is present Art. V, § 7, without change.

Sec. 6. *Inviolability of sinking funds and retirement funds.*

(1) *Sinking funds.* The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which the sinking fund has been created.

Comment. This is present Art. II, § 30, with minor editorial amendment, recommended for transfer to Article V by the State Constitution Study Commission in its Revised Constitution.

(2) *Retirement funds.* Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used

any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement, disability, and death benefits, except that retirement system funds may be invested as authorized by law.

Comment. This is present Art. II, § 31, substantially edited but substantively unchanged except that the amended version applies to the Local Governmental Employees' Retirement System and specifically permits disability and death benefits as is now provided by law. This Section is recommended for transfer to Article V by the State Constitution Study Commission in its Revised Constitution.

Sec. 7. *Drawing public money.*

(1) *State treasury.* No money shall be drawn from the State Treasury but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of State funds shall be published annually.

Comment. This is present Art. XIV, § 3, with an editorial amendment, recommended for transfer to Article V by the State Constitution Study Commission in its Revised Constitution.

(2) *Local treasury.* No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

Comment. This is present Art. VII, § 7, amended to delete reference to township treasuries and to include cities within its purview.

Sec. 8. *General laws defined.* Whenever the General Assembly is directed or authorized by this Article to enact general laws, or general

laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city or town, and other unit of local government, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government shall be made applicable without classification or exception in every unit of local government in the State. The General Assembly may at any time repeal any special, local or private act.

Comment. The purpose of this section is to clarify what is required of the General Assembly when uniform laws are directed by Article V, and to prohibit local legislation on these subjects.

"General laws" are defined as classified general laws, permitting some degree of flexibility in defining different classes according to population or other criteria. General laws are required for authority to establish subordinate service districts (Sec. 3(4)); all laws relating to debt (Sec. 4(1); and laws authorizing contracts which create debt (Sec. 4(2) (e) and (f)).

"General laws uniformly applicable throughout the State" require uniformity according to types of local units, allowing one law for counties and another for cities, but requiring all counties or all cities to be subject to the act. This is a new concept of uniform legislation for North Carolina and is required for authority to levy taxes or contract debt without a vote of the people (Sec. 2(5) and Sec. 4(2) (g)).

"General laws uniformly applicable throughout the State and in every county, city and town, or other local taxing unit" must be made applicable without exception in every unit of local government in the State. These laws are required by the present Article V and the proposed amendments for classification and exemption of property for taxation (Sec. 2(2) and (3)).

Sec. 9. *Merged or consolidated counties.* Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Article.

Comment. This new section will have its major application in determining what functions require a vote of the people for the levy of property taxes or incurrence of debt in a merged or consolidated county. Such a unit could be authorized to levy taxes or incur debt without a vote for any purposes authorized for either counties or cities.

20¢ Limitation Repealed

Our proposed amended Article V omits any constitutional limitation on the county tax rate, now fixed at 20¢ except for "special purposes" as authorized by the General Assembly. The 20¢ limitation no longer serves any useful purpose since all school taxes, all debt service taxes, and all "special purposes" taxes are excepted from the limitation. These excepted taxes account for 80 to 90 per cent of county taxes. We believe it would be futile to increase the limitation to what may be a reasonable figure at this time, since inflation is likely to make any dollar amount obsolete within a matter a few years.

There are also substantive reasons for recommended repeal of the 20¢ limitation. The Supreme Court holds that some county functions cannot be declared to be "special purposes" by the General Assembly. The most important of these is law enforcement. Thus, if a city and

county were to merge, all law enforcement functions would have to be financed within a 20¢ tax levy along with such other "general purpose" activities as general administration, tax assessment and collection, conduct of elections, and maintenance of physical plant, assuming that the Court would hold such a merged or consolidated unit to be county for the purposes of the limitation. This restriction makes consolidation difficult or impossible to accomplish in some counties. We have also heard testimony from Mr. W. E. Easterling, Executive Secretary of the Local Government Commission, that the multiplicity of funds required by the levy of so many special purpose taxes makes it impractical for the Commission to furnish financial data to prospective bond purchasers in the same detail as is supplied for municipal bonds.

TEXT OF ARTICLES V AND VII
PROPOSED CONSTITUTION OF NORTH CAROLINA, 1968
AS RECOMMENDED BY
THE STATE CONSTITUTION STUDY COMMISSION

The State Constitution Study Commission has recommended a comprehensive revision of the Constitution which reorganizes the document, eliminates obsolete and unconstitutional matter, and makes a few noncontroversial substantive amendments. The Commission recommends that the Proposed Constitution be submitted to the people alternatively with 9 amendments of such a nature as to make it desirable to give the people the choice of accepting or rejecting them independently of each other. Thus, if our proposed amendments to Article V are submitted to the people at the same time as the Constitutional Study Commission's Proposed Constitution, the people would have three choices: (1) Approve the Proposed Constitution and reject the Article V amendments; (2) Approve the Article V amendments and reject the Proposed Constitution; (3) Reject both the Proposed Constitution and the Article V amendments.

We endorse the revisions of Articles V and VII of the State Constitution Study Commission's Proposed Constitution and recommend that both the Proposed Constitution and our amendments to Article V be submitted to the people at the 1971 general election. We are therefore reprinting the text of Articles V and VII of the Proposed Constitution in this Report.

ARTICLE V

FINANCE

Section 1. Capitation tax.

(1) Capitation tax limited. The General Assembly may levy a capitation tax on every male inhabitant of the State over 21 and under 50 years of age, not in excess of two dollars, and cities and towns may levy a capitation tax on persons subject to the State tax not in excess of one dollar. No other capitation tax shall be levied. The governing boards of the several counties and of the cities and towns may exempt from the capitation tax any special cases on account of poverty or infirmity.

(2) Proceeds. The proceeds of the State and county capitation tax shall be applied to the purposes of education and the support of the poor, but in no one fiscal year shall more than 25 per cent thereof be appropriated to the latter purpose.

Sec. 2. State and local taxation.

(1) Power of taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

(2) Classification. Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis. No class shall be taxed except by a uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other local taxing unit of the State. The General Assembly's power to classify property shall not be delegated.

(3) Exemptions. Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding $300, any personal property. The General Assembly may exempt from taxation not exceeding $1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other local taxing unit of the State. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) Twenty-cent limitation. The total of the State and county tax on property shall not exceed 20¢ on the $100 value of property, except when the property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act. This limitation shall not apply to taxes levied for the maintenance of the public schools of the State. The State tax shall not exceed five cents on the $100 value of property.

(5) Necessary expense limitation. No tax shall be levied or collected by the officers of any county, city or town, or other unit of local government, except for the necessary expenses thereof, unless approved by a majority of the qualified voters who vote thereon in any election held for the purpose.

(6) Income tax. The rate of tax on incomes shall not in any case exceed ten per cent and there shall be allowed the following

minimum exemptions, to be deducted from the amount of annual incomes: to the income-producing spouse of a married couple living together, or to a widow or widower having minor child or children, natural or adopted, not less than $2,000; to all other persons not less than $1,000; and there may be allowed other deductions, not including living expenses, so that only net incomes are taxed.

Sec. 3. Limitations upon the increase of State debt.

(1) Authorized purposes; two-thirds limitation. The General Assembly may contract debts and pledge the faith and credit of the State for the following purposes:

To fund or refund a valid existing debt;

To borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding 50 per cent of such taxes;

To supply a casual deficit;

To suppress riots or insurrections, or to repel invasions.

For any purpose other than these enumerated, the General Assembly shall have no power, during any biennium, to contract new debts on behalf of the State to an amount in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium, unless the subject be submitted to a vote of the people of the State. In any election held in the State under the provisions of this Section, the proposed indebtedness shall be approved by a majority of the qualified voters who vote thereon.

(2) Gift or loan of credit prohibited. The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the

State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

(3) Certain debts barred. The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assemblies of 1868-69 or 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.

Sec. 4. Limitations upon the increase of local debt.

(1) Authorized purposes; two-thirds limitation. The General Assembly may authorize counties, cities and towns, and other units of local government to contract debts and pledge their faith and credit for the following purposes:

To fund or refund a valid existing debt;

To borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding 50 per cent of such taxes;

To supply a casual deficit;

To suppress riots or insurrections.

For any purpose other than these enumerated, the General Assembly shall have no power to authorize counties, cities and towns, and other units of local government to contract debts, and counties, cities and towns, and other units of local government shall not contract debts,

during any fiscal year, to an amount exceeding two-thirds of the amount by which the outstanding indebtedness of the particular county, city or town, or other unit of local government shall have been reduced during the next preceding fiscal year, unless the subject is submitted to a vote of the people of the particular county, city or town, or other unit of local government and is approved by a majority of the qualified voters who vote thereon.

(2) Necessary expense limitation. No county, city or town, or other unit of local government shall contract any debt, pledge its faith, or lend its credit except for the necessary expenses thereof, unless approved by a majority of the qualified voters who shall vote thereon in any election held for that purpose.

(3) Certain debts barred. No county, city or town, or other unit of local government shall assume or pay, nor shall any tax be levied or collected for the payment of any debt, or the interest upon any debt, contracted directly or indirectly in aid or support of the rebellion.

Sec. 5. Acts levying taxes to state objects. Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Sec. 6. Inviolability of sinking funds and retirement funds.

(1) Sinking funds. The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which the sinking fund has been created.

(2) Retirement funds. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used

any part of the funds of the Teachers' and State Employees' Retirement System for any purpose other than retirement, disability, and death benefits, except that retirement system funds may be invested as authorized by law.

Sec. 7. Drawing public money.

(1) State treasury. No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be annually published.

(2) Local government treasuries. No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

ARTICLE VII

LOCAL GOVERNMENT

Section 1. General Assembly to provide for local government. The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

Sec. 2. Sheriffs. In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law.

Sec. 3. Merged or consolidated counties. Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution.

III

STATE AND REGIONAL PLANNING AND STATE TECHNICAL ASSISTANCE TO LOCAL GOVERNMENT

III

STATE AND REGIONAL PLANNING AND STATE TECHNICAL ASSISTANCE TO LOCAL GOVERNMENT

Our recommendations for State-level action to improve local government in North Carolina come at a time when the State and its local governments are experiencing unprecedented demands for services. At the outset we recognize that State and local governmental goals are interrelated and should be developed cooperatively and with mutual reference. Only by close, coordinated interaction with its local governments can the State achieve its goals for the better government of all its people. Only through partnership with the State can local government provide the services its citizens demand.

The North Carolina Supreme Court expresses the legal relationship between the State and its local governments in these words:

> The weight of authority is to the effect that all the powers and functions of a county bear reference to the general policy of the State, and are in fact an integral portion of the general administration of State policy. O'Berry v. Mecklenburg County, 198 N.C. 357 (1930).

We suggest that this statement is today equally applicable to cities and towns, and would rephrase the Court's statement to read: "all the powers and functions of local government . . . are in fact an integral portion of the general administration of State policy." If this be true, and we believe that it is, the primary object of our study is to consider how the State and its local governments can best work together to serve the people of North Carolina.

It is perhaps ironic that perception of the mutual interdependence of State and local government has been heightened in the public consciousness by the impact of federal government programs at the local level. Many

analysts have warned that the states are in danger of becoming irrelevant to the twentieth century because they have not taken a more positive role in aiding local governments to gain access to federal assistance. The federal government has implemented numerous broad programs directed toward social problems concentrated in the nation's cities and suburban areas, in Appalachia, and in the Coastal Plains. North Carolina local governments are busily engaged in the search for federal funds to assist in solving pressing problems. The State can help its local governments to plan for orderly development and to obtain access to federal funds to implement development programs.

The impact of urbanization on North Carolina's cities, small towns, and rural areas has been well documented in numerous reports. Fortunately, North Carolina has escaped, so far, the confusing elaboration of overlapping governmental units and piecemeal, uncoordinated programs which have characterized the response of most of the urban industrial states to the problems of governing their metropolitan areas. We have escaped in part because North Carolina has not developed around a single metropolitan complex and in part because of the wisdom of the General Assembly in enacting annexation laws conducive to the orderly growth and development of cities, and conferring new powers on counties in preference to special districts. A significant feature of our record in this regard has been the general willingness of our city and county governments to undertake new functions.

The growth in responsibilities of city and county government in North Carolina has increased the complexity of these governments and enlarged the area of interdependence of local, State and federal programs. It is now imperative that federal, State and local policies and programs be coordinated. For this reason, we will recommend that the State undertake a strong program

of long-range planning closely coordinated with improved local and regional planning efforts. In addition we will recommend that the State improve its means of offering technical assistance to local governments.

FUNCTIONS OF LOCAL AFFAIRS AGENCIES

There is nation-wide interest in State-level action to strengthen local government. Within the past ten years, 19 states have created new agencies exclusively or primarily concerned with local governmental affairs. Fourteen of these new agencies have been established since 1966. The question of whether North Carolina should establish a local affairs agency was discussed at length in our public hearings, and Governor-elect Robert W. Scott repeatedly advocated a State local affairs agency during his campaign.

Early in our deliberations we asked the Institute of Government to prepare a study on state local affairs agencies. This was undertaken by Professor Philip P. Green, Jr., of the Institute, and his report entitled A State Agency for Local Affairs? is appended to this Report. We have studied Professor Green's report carefully and agree with his conclusion that the proper analytical approach is for us to determine what needs to be done at the State level to strengthen local government and to coordinate federal, State and local policies and programs before we turn our attention to how any new State activity should be administered.

We find that the functions suggested for, or assigned to, state local affairs agencies fall within five major categories:

(1) State and regional planning (developing state and regional policies and plans which will provide a framework for local planning efforts and at the same time provide guidance for state activities affecting local units and their development).

(2) Technical and management assistance (provision of advice and training, and actual performance of work in fields requiring professional or specialized training and experience).

(3) Research and information (fact-gathering and analysis of governmental problems).

(4) Coordination of state and federal programs (assisting the Governor to coordinate the activities of state departments, insofar as they affect local governments, and assisting local governments to make maximum use of available state and federal grant programs).

(5) Program administration (direct administration of state grants to local governments for housing, urban renewal, poverty programs, or similar purposes).

MAJOR NEEDS IN NORTH CAROLINA

When existing services of North Carolina agencies were measured against these categories of desired services and functions, we find that there are five areas in which we believe improvement is necessary:

(1) There is need for a greatly strengthened program of State and regional planning.

(2) There is need for a central point in State government from which local governments can be referred to the particular State agencies which are furnishing the type of assistance a unit is seeking.

(3) Some local governmental units find it difficult to hire, either on a full-time or on a consulting basis, the professionally-trained specialists whom they need; there is a need for a State pool of specialists to provide technical assistance to local governments.

(4) There is a need for a central "data bank" at which statistical data and other information collected by State agencies, as well as information concerning current research projects and their results, might be made available to State and local officials and others concerned with governmental trends and problems.

(5) Local governments require improved assistance in identifying available grant programs and in making application for such grants.

On the basis of testimony received at our public hearings and independent evidence, we conclude that the most pressing of these needs is to strengthen the State and regional planning program and to improve the technical assistance offered to local governments.

STATE AND REGIONAL PLANNING

The importance of State and regional planning to local governments can

be demonstrated in terms both of physical development and economic development. As a result both of migration from rural areas and of natural increase, some regions of the State are experiencing extraordinarily rapid population growth. As land in these areas is converted from agricultural use to urban types of development in a sprawling, formless pattern, it becomes increasingly apparent that these areas will soon be experiencing the problems of the great metropolitan centers in other states--difficulties in controlling air pollution, furnishing water, disposing of sewage and other wastes, building major thoroughfares or rapid transit systems, finding space for parking, providing police and fire protection, dealing with the intricate social and economic problems of the slums, and so forth. Other regions of the State are experiencing economic decline and population decrease, as young people increasingly move to areas where they can find more and better jobs. In some of these areas the revenue base is growing slowly, if at all. Some are finding it increasingly difficult to provide the basic services of local government. Still other areas are in the throes of shifting from an agricultural to an industrial economy, with their residents moving from the farms and small towns to larger centers, creating problems both for the units they are leaving and for those where they are settling--while large potentials for development remain undiscovered and untapped.

The one factor which is common to all of these areas is that so many problems are beyond the capacity of any single government to handle. Pollution of air and water is no respecter of municipal boundaries. Economic development can be best achieved through coordinated programs on a region-wide basis. Highway systems must be planned comprehensively. Local governments cannot afford to develop a high-speed transit system linking our major cities. Only the State or a number of counties working together can support

high-quality air terminals, institutions of higher education, cultural facilities, and other elements necessary to attract a high rate of economic development. Only the State or its regions can realistically embark upon a program of reserving large parks and other open spaces so as to prevent many cities from growing together in a continuous mass of urban development. Only the State or a region can afford the high quality professional advice that can construct a realistic program of economic development. Only the State can build the expensive highways necessary to "open-up" a region and link it to markets throughout the country.

If the existing efforts of cities, towns, counties, and the various State departments attempting to solve particular aspects of these problems on a piecemeal basis could be coordinated into comprehensive programs, their effects could be multiplied many-fold. Without such coordination, we feel that there is a very real danger that we will drift into the same noxious conditions that affect so many other parts of the country, never realizing that they were imminent. We must proceed immediately, while we still have the time to plan for the orderly development of our cities, towns and open country. Only through determined effort can we assure that they will be desirable places in which to live and work in the future.

The benefits from State and regional planning have barely been tapped in North Carolina. While a State Planning Board was created in 1935 and functioned until the conclusion of World War II and the Department of Administration was authorized in 1957 to establish a Long Range Planning Division, it was not until the creation of the State Planning Task Force in 1965 that significant steps toward positive planning were initiated at the State level. Similarly, while the General Assembly authorized local governments to create joint planning boards as long ago as 1945 and provided a succession of

enabling acts for the creation of Regional Planning Commissions and Regional Economic Development Commissions in 1957, 1959, and 1961, it was not until the Appalachian Regional Commission began its activities (working with the State Planning Task Force) that the true potential of regional planning began to appear.

We are encouraged by the steps which have been taken, but we believe that a much stronger effort is necessary in order to give needed guidance and assistance to local development efforts and to prevent chaotic patterns of development in the rapidly-urbanizing areas.

WE THEREFORE RECOMMEND THAT THE STATE PLANNING TASK FORCE OF THE DEPARTMENT OF ADMINISTRATION BE GIVEN THE MORE PERMANENT DESIGNATION OF THE DIVISION OF STATE AND REGIONAL PLANNING; THAT IT BE GIVEN FUNDS COMMENSURATE WITH ITS RESPONSIBILITIES, AND THAT IT BE ASSIGNED THE FOLLOWING ACTIVITIES:

(1) TO DEVELOP AND RECOMMEND TO THE GOVERNOR A STATEMENT OF LONG-RANGE GOALS FOR THE DEVELOPMENT OF THE STATE;

(2) TO ANALYZE ALTERNATIVE POLICIES FOR FULFILLING THE STATE'S LONG-RANGE GOALS AND TO ADVISE THE GOVERNOR AND THE GENERAL ASSEMBLY CONCERNING THE IMPLICATIONS OF POLICIES AND PROGRAMS PROPOSED OR ADOPTED;

(3) TO PREPARE AND REVISE PERIODICALLY COMPREHENSIVE PLANS FOR IMPLEMENTING THE STATE'S POLICIES AS DEFINED BY THE GOVERNOR AND THE GENERAL ASSEMBLY, INCLUDING CAPITAL IMPROVEMENT BUDGETING AS A MEANS OF EFFECTUATING SUCH PLANS;

(4) TO PROVIDE ASSISTANCE, GUIDANCE, AND COORDINATION TO OTHER STATE AGENCIES IN THEIR PREPARATION OF DEVELOPMENTAL PLANS AND PROGRAMS, AND TO REVIEW ALL SUCH PLANS OF STATE AGENCIES FOR CONSISTENCY WITH OVER-ALL STATE PLANS AND POLICIES;

(5) TO COORDINATE THOSE PHASES OF MULTI-STATE REGIONAL DEVELOPMENT COMMISSION PROGRAMS RELATING TO NORTH CAROLINA;

(6) TO ASSIST THE COUNTIES AND MUNICIPALITIES OF THE STATE IN THE DELINEATION OF MULTI-COUNTY DEVELOPMENT DISTRICTS, THE ESTABLISHMENT OF REGIONAL PLANNING AND ECONOMIC DEVELOPMENT AGENCIES FOR SUCH DISTRICTS, AND THE PREPARATION OF COORDINATED LONG-RANGE DEVELOPMENT PROGRAMS INVOLVING BOTH STATE AND LOCAL ACTIVITIES; AND TO COORDINATE THE ADMINISTRATIVE DISTRICTS OF THE VARIOUS STATE AGENCIES WITH THE MULTI-COUNTY DEVELOPMENT DISTRICTS;

(7) TO DEVELOP A DATA BANK OF INFORMATION FOR THE USE OF STATE AND LOCAL GOVERNMENTAL AGENCIES AND THE GENERAL PUBLIC.

We strongly feel that maximum effort must be made to mobilize the best intellectual resources of the State in this program of activities. The private sector cannot plan most effectively without knowledge of the developmental plans of government. Government needs information concerning how its programs will affect private enterprise. Research is needed to provide insights into the possible effect of policies and programs. Specifically, we believe that the State, private enterprise and the academic community must establish lines of communication which will facilitate a coordinated approach to the development of the State. In order to open these lines of communication, we believe that the Governor, through the Division of State and Regional Planning, should have an established means of consulting the private and academic sectors in the development and fulfillment of the State's long-range plans. WE THEREFORE RECOMMEND THE CREATION OF AN ADVISORY COUNCIL ON PLANNING AND DEVELOPMENT TO ADVISE THE GOVERNOR AND THE DIVISION OF STATE AND REGIONAL PLANNING ON THE DEVELOPMENT AND IMPLEMENTATION OF LONG-RANGE GOALS FOR THE STATE. WE RECOMMEND THAT THE COUNCIL BE COMPOSED OF FROM 12 TO 15 HIGHLY COMPETENT CITIZENS NOT DIRECTLY INVOLVED IN STATE GOVERNMENT APPOINTED BY THE GOVERNOR FOR DEFINITE, OVERLAPPING TERMS. WE RECOMMEND THAT THE COUNCIL BE REQUIRED TO MEET AND REPORT TO THE GOVERNOR AT LEAST QUARTERLY.

The State cannot implement long-range plans without the support of the General Assembly and the general public. Furthermore, there should be an established means of reporting periodically to the people on the State's progress toward achieving its long-range goals. WE THEREFORE RECOMMEND THAT THE GOVERNOR REPORT TO EACH REGULAR SESSION OF THE GENERAL ASSEMBLY ON THE STATE'S PROGRESS TOWARD FULFILLING ITS LONG-RANGE PLANS.

We conclude that the Division of State and Regional Planning must play a central role in developing a network of coordinated State and regional programs to guide and encourage maximum development throughout the State while preserving a high quality environment for all our people. However, we recognize that there has not been widespread use of existing power to create regional planning and economic development commissions. The enabling legislation did not provide funds to assist local governments to organize and operate commissions. It is now apparent that financial assistance is necessary before some local governments can initiate regional planning and economic development commissions. IN ORDER TO PROVIDE AN INCENTIVE FOR OUR LOCAL GOVERNMENTS TO PARTICIPATE IN SUCH EFFORTS, WE RECOMMEND THAT THE GENERAL ASSEMBLY APPROPRIATE AN AMOUNT SUFFICIENT TO PROVIDE GRANTS TO REGIONAL PLANNING AND ECONOMIC DEVELOPMENT COMMISSIONS. WE FURTHER RECOMMEND THAT THE GRANT PROGRAM BE ADMINISTERED BY THE DIVISION OF STATE AND REGIONAL PLANNING, AND THAT THE DIVISION BE GIVEN AUTHORITY TO CONDITION STATE FUNDING ON CRITERIA THAT WILL ENCOURAGE LOCAL CREATION AND LOCAL FUNDING OF RATIONAL, VIABLE REGIONS. WE STRONGLY RECOMMEND THAT THE STATE SHOULD NOT ATTEMPT TO CREATE REGIONAL PLANNING COMMISSIONS ON ITS OWN MOTION.

DIRECT TECHNICAL ASSISTANCE

As has been indicated earlier, there are important needs that are unlikely to be met without direct State assistance in providing technical services to local governmental units. The greatest need mentioned by local officials is for better information concerning the over 400 federal grant programs which are available to them and for more assistance in developing applications and making maximum utilization of such programs. Currently, many such programs are administered through State agencies such as the

State Board of Public Welfare, the Department of Public Instruction, and the State Highway Commission, which have had long-standing relationships with their counterparts in the federal government. The State Planning Task Force has served as an in-State representative for the administration of some of these programs, and it has assumed general responsibility for guiding local units to those programs which do not fall within the jurisdiction of any other agency (as well as guiding them to other State agencies when appropriate).

We find that another major need is for a pool of trained technicians upon whom local governments can call through contractual arrangements when they cannot themselves afford to hire personnel with those particular skills and qualifications. Many local governments are not able to employ efficiently on a full-time basis the range of specialists needed to carry out the expanded functions of local government. Some services of specialists can be provided best at the State level, while others are more appropriately provided at the regional level. The State already provides professional planning assistance through regional offices of the Division of Community Planning of the Department of Conservation and Development. The Local Government Commission offers advice on fiscal affairs. The State Planning Task Force offers information and assistance in federal grant matters. Other examples are mentioned in Professor Green's report appended hereto. Among the services most needed are planning, management, accounting, and tax appraisal.

We considered a number of organizational arrangements which might be made for the provision of technical assistance to local governments by the State. WE RECOMMEND THAT A NEW DIVISION BE CREATED WITHIN THE DEPARTMENT OF ADMINISTRATION, TO BE NAMED THE DIVISION OF LOCAL GOVERNMENTAL SERVICES, WITH THE FOLLOWING RESPONSIBILITIES:

(1) TO PROVIDE PROFESSIONAL PLANNING, ACCOUNTING, MANAGERIAL ASSISTANCE, AND SIMILAR SERVICES TO LOCAL GOVERNMENTS, ON A CONTRACT BASIS OR WITHOUT CHARGE, THROUGH RESIDENT STAFF, REGIONAL OFFICES OR CENTRALLY, AS SEEMS MOST APPROPRIATE;

(2) TO ASSIST LOCAL GOVERNMENTS IN EVALUATING VARIOUS FEDERAL AND STATE GRANT PROGRAMS; TO REFER THEM TO APPROPRIATE STATE AGENCIES FOR ASSISTANCE IN MAKING APPLICATIONS FOR SUCH GRANTS, AND WHERE THERE IS NO SUCH AGENCY, TO PROVIDE SUCH ASSISTANCE ITSELF;

(3) TO SERVE AS A CENTRAL REFERENCE POINT FOR DIRECTING LOCAL GOVERNMENTS TO SOURCES OF ASSISTANCE WITHIN THE VARIOUS STATE DEPARTMENTS AND AGENCIES;

(4) TO ASSIST THE GOVERNOR IN COORDINATING AND EVALUATING PROGRAMS OF OTHER STATE DEPARTMENTS AND AGENCIES WHICH HAVE IMPACT ON LOCAL GOVERNMENTS.

We make this recommendation for two major reasons. First, we believe that any local assistance program of this type will have necessary interrelationships with the State and regional planning program centered in the Division of State and Regional Planning of the Department of Administration. (Indeed, at least six of the new local affairs agencies in other states have been placed within state planning agencies or have been given state planning responsibilities.) The line between the two types of activities is not easy of definition and desirably should be drawn on the basis of actual experience.

Second, the Department of Administration is in contact with all of the activities of the various State departments which might impinge upon localities, and therefore this is a strategic location for any agency whose mission is to direct local governments to particular sources of assistance. The Division of Local Governmental Services will need a close working relationship with agencies in several departments if it is to carry out its programs effectively. Location of the Division within the Department of Administration should facilitate the necessary cooperation.

We wish to emphasize that a simple transfer of personnel or functions of existing State agencies to a new Division of Local Governmental Services within the Department of Administration would be of little avail. We have

recommended a substantial expansion of the State's technical assistance role, and this will require substantially increased financial support of the new Division of Local Governmental Services. If technical assistance is offered in management consultation and in preparing and forwarding federal grant applications, highly skilled persons must be employed and adequate supporting services provided. WE RECOMMEND THAT THE DIVISION OF LOCAL GOVERNMENTAL SERVICES BE GIVEN FUNDS ADEQUATE TO OFFER A FULL RANGE OF TECHNICAL ASSISTANCE IN THE FIELDS OF PLANNING, MANAGERIAL ASSISTANCE, AND FEDERAL GRANT ASSISTANCE AND THAT THE DIVISION OF COMMUNITY PLANNING OF THE DEPARTMENT OF CONSERVATION AND DEVELOPMENT BE TRANSFERRED TO THE NEW DIVISION.

The new Divisions of Local Governmental Services and State and Regional Planning should work as closely as possible with the Local Government Commission. This agency has amassed a considerable expertise in local financial affairs and has for several years offered technical assistance to local governments in accounting and financial matters. It has been handicapped in its Accounting Advisory Section, however, by inadequate funding. WE RECOMMEND THAT THE LOCAL GOVERNMENT COMMISSION BE GIVEN FUNDS ADEQUATE TO OFFER A FULL RANGE OF TECHNICAL ASSISTANCE IN ACCOUNTING AND FINANCIAL AFFAIRS, AND THAT ITS OFFICES BE PHYSICALLY LOCATED AS NEAR AS POSSIBLE TO THE OFFICES OF THE DIVISIONS OF LOCAL GOVERNMENTAL SERVICES AND STATE AND REGIONAL PLANNING IN ORDER TO FACILITATE AND ENCOURAGE CLOSE WORKING RELATIONSHIPS AMONG THESE THREE AGENCIES.

COORDINATION OF BUDGETING, PLANNING, AND TECHNICAL ASSISTANCE DIVISIONS

A major reason for recommending location of State and Regional Planning and local technical assistance divisions within the Department of Administration is because this Department is responsible for State budgeting. If

our recommendations are to be carried out effectively, there must be a very close coordination of State budgeting, State and regional planning, and State technical assistance to local governments, under the leadership of the Governor acting through the Director of Administration. A comprehensive program of State and regional planning, so vital to the progress of the State, is foredoomed to failure unless planning and budgeting are carried on hand in hand. Regional planning will not go forward as it should unless the State is willing to undertake technical and financial assistance to regional planning and economic development commissions. Since regional plans depend for their execution on the counties and cities making up the region, strong local governments are essential to the fulfillment of a program of regional planning. And we believe a vigorous program of State technical assistance is one of the best ways the State can go about strengthening its local governments. Thus, it is significant that we have recommended a divisional structure for the Department of Administration which gives equal standing to the Division of the Budget, the new Division of State and Regional Planning, and the new Division of Local Governmental Services. It is also significant that we have recommended location of the functions to be performed by the new divisions within this Department so that the work of the divisions can be coordinated with the Division of the Budget through one office.

IV

LOCAL LEGISLATION

IV

LOCAL LEGISLATION

Introduction

Legislation minutely regulating the affairs of individual local governments is a long-established tradition in North Carolina. From one-half to three-quarters of the laws enacted by a typical session of the General Assembly apply to only one or a few counties, cities or other political subdivisions and public corporations of the State. From time to time reform of the local legislation tradition has been attempted with little success.

The first instance of regulation of the local legislation process was a statute of 1796 requiring prior notice of intention to present a petition to the General Assembly for the enactment of a local law. There is no evidence that it was observed. Even had this statute been implemented, it would not have restricted legislative authority to legislate individually for each county and city. Restriction of this power was not even seriously considered in the constitutional convention of 1835 which prohibited private acts on such subjects as divorce and alimony.

The first serious movement to limit local legislation begin with Governor Kitchin's biennial message to the General Assembly of 1911. Eventually this movement culminated in 1916 with the adoption of Article II, § 29, of the Constitution and amendment of Article VIII, §§ 1 and 4. These amendments sought to prohibit all local legislation

for cities, to forbid the chartering of private business corporations by special act, and to eliminate local acts on a list of 14 subjects set out in Art. II, § 29. Article II, § 29, has been very narrowly construed by the Supreme Court and has had no noticeable effect on the volume of local legislation. The amendment to Article VIII, § 4, which was thought to prohibit local legislation for cities was held not to have that effect by the Court in Kornegay v. Goldsboro, 180 N.C. 441 (1920). The prohibition of Article VIII, § 1, against special act charters for private business corporations has been honored.

Since 1916 sporadic attempts to deal with the problem of local legislation have had mixed success. The 1947 General Assembly created a study commission "to make a thorough and complete study of the whole problem of Public-Local and Private Legislation." The commission's report, supported by exhaustive studies prepared by the Institute of Government, recommended constitutional home rule for both counties and cities, revising of existing general laws, and a substantial tightening of the constitutional prohibitions against local acts. Its proposals were reported unfavorably by committee in the 1949 General Assembly. In 1955 bills were introduced proposing legislative home rule. They were reported favorably by committee but defeated by voice vote on second reading in the House of Representatives.

The proposals of the North Carolina Bar Association relating to reform of the lower court system and of the 1959 Tax Study Commission concerning the property tax were more fortunate. In 1962 the people ratified amendments to Articles IV and V of the Constitution designed primarily to make the lower court system and the property tax uniform throughout the State and to prohibit local modification of the more essential features of these subjects. The

Courts Commission has gone beyond the constitutional commands for uniform legislation to recommend uniform systems for drawing and compensating jurors, and it seems likely that by 1971 local court legislation will have ceased entirely.

At the present there seems to be renewed interest in stemming the tide of local legislation. The 1965 General Assembly adopted a binding local bill deadline for the first time, and this was continued by the 1967 General Assembly. The first charge of the Local Government Study Commission, created by the 1967 General Assembly, was to devise means to reduce the volume of local legislation. The present movement seems to have several roots. First, there is increasing sentiment that local legislation as practiced in this State is not good for local government. Local governments need to be encouraged to take on responsibility for many matters now regulated by local act of the General Assembly under broad general enabling legislation. Second, recent sessions of the General Assembly have been filled with important, controversial public issues. Many legislators are beginning to realize that the time consumed by local legislation may often detract from the time they need to devote to these important State-wide matters. Finally, the new apportionment of the House of Representatives seems to have had an effect on the willingness of legislators to introduce local bills. When each county had at least one representative, there was at least one man in the legislature familiar with local conditions and conversant with the factors which lead to requests for local legislation. With Representatives now representing districts rather than counties this is not always true.

I. Constitutional Solutions

The General Assembly has full power and authority to enact any legislation it may deem expedient and wise, subject only to the commands and prohibitions of the State and federal constitutions. Thus, there is only one sure means of prohibiting the General Assembly from enacting local bills: constitutional prohibition or regulation. We have considered several alternative approaches to constitutional regulations of the process of local legislation and reject them all for the reasons we shall indicate.

1. Constitutional home rule. In several states, local governments have constitutional authority to adopt home rule charters which cannot be amended or repealed by the State legislature through local legislation. While this method would be certain to reduce the volume of local legislation in the North Carolina General Assembly, it would be a 180 degree change of direction from our current course. Carried to extremes, this alternative would produce not one sovereign State, but 100 sovereign counties and over 400 sovereign municipalities. While no state has carried constitutional home rule to such an extreme, the idea of multiple sovereigns does point out the basic conflicts introduced into the body politic by the system. We believe that the General Assembly must be the supreme maker of State policy under the Constitution, and that this basic philosophy of government would be severely compromised by any scheme which limited its authority to create and confer power and authority upon local governments. We believe it would be especially unwise to consider constitutional home rule solely as a means of reducing the volume of local legislation in the

General Assembly. If such an extreme departure from the legislative traditions of the State is to be seriously considered, it must be in a context of a basic rethinking of the relative roles of State and local government in the whole body politic, and not in the context of devising means of making one aspect of government, the legislative process, more efficient.

2. Residual powers. A variation on constitutional home rule not yet adopted by any state, but advocated by Dean Jefferson Fordham of the University of Pennsylvania School of Law and contained in the proposed new constitution of Maryland, defeated by the voters, is the concept of residual powers for local government. Under this system local governments are granted authority by the constitution to exercise any power and to perform any function not expressly denied to them by general State law. In other words, the residual powers concept turns inside out the normal rule of construction that local governments have only powers expressly granted by law. The proposed Maryland Constitution expressed the concept in this manner:

> "Sec 7.04. Powers of Counties. A county may exercise any power, other than the judicial power, or perform any function unless that power or function has been denied to the county by this Constitution or by its instrument of government [i.e., its charter], or has been transferred exclusively to another governmental unit, or has been denied to the county by the General Assembly by law . . . .

This method would also minimize the volume of local legislation and would avoid the objections to constitutional home rule by giving the legislature ultimate control over local government to whatever extent it might deem desirable. However, the residual powers concept requires the legislature to act negatively. The difference in legislative attitudes toward local government produced by a negative rather than a positive approach, though subtle, might be of crucial importance. It is only natural to be broader in prohibitions than in grants of authority, and it is usually easier to construe grants of power broadly than to construe prohibitions narrowly. Furthermore, this approach would be a distinct and relatively extreme departure from our present system which would require a reorientation of local officials, lawyers, judges, and legislators, as well as an extended period of litigation before many questions as to the mere right of a local unit to act would become settled. While the residual powers concept has much to recommend it in theory, we do not think the time is ripe to seriously consider it for North Carolina.

3. Prohibitions against local legislation. Constitutional prohibitions against local legislation per se take two basic forms in state constitutions. One approach is to prohibit local laws on any subject "on which a general law could be made applicable." We strongly recommend against any consideration of this approach. In states in which it has been tried, the courts constantly struggle with the question of whether a general law "could have been made applicable" on a given subject with the result that no local legislation at all is enacted on subjects of any importance lest it be declared unconstitutional.

The second basic approach is that taken by North Carolina in 1916 in inserting Article II, Sec. 29, into the Constitution. This approach prohibits local acts on any of a list of subjects set out in the constitution. We believe this approach is sound when there are substantive reasons for prohibiting local acts on a given subject. For example, our Constitution now prohibits several varieties of local acts relating to the court system because we determined as a matter of State policy that the administration of justice should be uniform throughout the State. Similarly, our Constitution prohibits local acts classifying or exempting property for taxation because we determined as a matter of State policy that the property tax base should be the same throughout the State. The State Constitution Study Commission has recommended that the election laws should be uniform throughout the State and local legislation prohibited on this subject. We endorse that recommendation and note that it will reduce the volume of local legislation. However, we believe it is unwise to insert constitutional prohibitions against local legislation on specified subjects solely for the purpose of eliminating them from the legislative calendars. We strongly recommend that constitutional limitations on the power of local legislation be limited to matters for which there are compelling reasons for requiring State-wide uniformity.

II. Legislative Solutions

Having rejected constitutional solutions to the problem of local legislation, we recognize that the solution must lie in establishing State policy for general laws and against local bills through the General Assembly

itself. We believe this can be done. We recommend that the General Assembly adopt the following as a statement of basic State policy: LOCAL GOVERNMENT MUST BE GIVEN AND ENCOURAGED TO ACCEPT AUTHORITY TO REGULATE LOCAL AFFAIRS WITHOUT THE INTERFERENCE OR BENEFIT OF LOCAL LEGISLATION EXCEPT (a) WHERE AUTHORITY IS SOUGHT TO UNDERTAKE PROGRAMS OR PROCEDURES NOT PROVIDED FOR BY GENERAL LAW ON AN EXPERIMENTAL BASIS; (b) WHERE THERE ARE SOUND REASONS OF POLICY FOR RETAINING LEGISLATIVE CONTROL OVER A PARTICULAR SUBJECT MATTER ON A CASE BY CASE BASIS.

To implement this policy for the future we recommend that the 1969 General Assembly take the following steps:

1. REPEAL ALL LOCAL EXEMPTIONS FROM PERMISSIVE GENERAL LAWS. Our General Statutes contain some 25 statutes from which some counties are exempted. For the most part these statutes do not compel but merely authorize counties to undertake specified programs. A large number of bills are introduced at each session adding or subtracting counties from these lists. Where programs or procedures are made optional and discretionary with the local governing board we see no sound reason why individual units should be exempted from the acts.

2. ADOPT LEGISLATION AUTHORIZING THE VOTERS OF THE SEVERAL COUNTIES, CITIES AND TOWNS OF THE STATE TO MODIFY THE COMPOSITION AND MODE OF ELECTION OF THE GOVERNING BODIES OF THESE UNITS WITHIN CLEARLY DEFINED OPTIONAL FORMS. It has been the policy of this State for many years to permit local governments to organize themselves as they see fit. The general law sets out a form of government to be used absent local legislation, but only five counties operate entirely under the general law prescribed in Chapter 153 of

the General Statutes and virtually all cities have obtained charters varying the plans of organization prescribed by Chapter 160 of the General Statutes. In the Appendix to this chapter of our Report are tables showing the number of local bills introduced in the 1967 General Assembly by subject matter. Over 50 bills dealt with the number, terms of office, and mode of election of the governing boards of counties, cities and towns. We are including in the Appendix to this chapter bills which, if enacted, would delegate to the counties, cities and towns authority to determine these matters locally with the right of the people to petition any change to a referendum.

3. REPEAL ALL LOCAL ACTS FIXING THE SALARIES AND FEES OF LOCAL OFFICIALS AND DELEGATE AUTHORITY TO FIX SALARIES AND FEES TO LOCAL GOVERNING BOARDS, INCLUDING THE POWER TO FIX THE PER DIEM AND ALLOWANCES OF THE GOVERNING BOARD ITSELF. By far the most numerous category of local bills in 1967 dealt with salaries and fees. While there may be plausible reasons for legislative determination of individual salaries and fees in particular instances, these reasons are usually related to local political conditions. We recognize that officers elected by the people should not be totally dependent on a board of county commissioners or a city council for their compensation, but protection of income during a term of office can easily be guaranteed by denying local governing boards authority to reduce the compensation of elected officers during their term of office. We have therefore included in the Appendix to this chapter a bill repealing all local acts now fixing salaries, and delegating authority to county commissioners and city governing boards to fix all local salaries within their jurisdictions, subject to the condition that the salaries of elected officers may not be reduced during their term of office. We are also endorsing and recommending a bill put forward by the

North Carolina Association of Registers of Deeds which fixes a uniform fee schedule for Registers of Deeds.

4. DELEGATE ORDINANCE-MAKING AUTHORITY TO BOARDS OF COUNTY COMMISSIONERS. While cities have had authority for many years to make local ordinances punishable as misdemeanors by the State, only in 1963 did the General Assembly delegate authority to regulate conduct to counties. This statute, G.S. § 153-9(55), did not make county ordinances punishable as misdemeanors and exempted nearly half of the counties. As a consequence, it was declared unconstitutional under Art. II, § 29, by the Supreme Court insofar as it granted authority to adopt ordinances which could be said to "regulate labor, trade, mining, or manufacturing." Since no local authority exists to regulate conduct outside the boundaries of cities and towns, each session of the General Assembly enacts scores of local bills defining misdemeanors. For example, the 1967 General Assembly enacted bills relating to the discharge of firearms on public highways in Alleghany, Guilford and Catawba, disturbing the peace in Guilford, making unreasonably loud noises in Carteret and China Grove Township of Rowan, abandoning domestic animals on public highways in Nash and 17 other counties (by six separate identical bills), relating to the operation of pool rooms on Sunday in Robeson, legalizing bingo in New Hanover, regulating surfing in Pender and Carteret, relating to dogs running at large in Forsyth, regulating the use of public beaches in Dare, relating to parking on the highway on Bogue Banks in Carteret and in Township 4 in Cabarrus, and a host of others. These matters can easily be handled by boards of county commissioners under general enabling legislation. We have included a bill in the Appendix granting ordinance-making authority to counties.

5. RECODIFY AND REVISE THE GENERAL STATUTES RELATING TO LOCAL GOVERNMENT. A prime cause of local legislation is the antiquated state of much of the general law. Chapter 160 of the General Statutes which contains most of the general law concerning cities is composed of an 1852 statute, much amended, onto which is grafted a 1917 statute which partly parallels the 1852 provisions, and to which is added a large number of statutes adopted since 1917 concerning such matters as urban redevelopment, planning, public utilities, and the like. Much of Chapter 160 is a dead letter, some of it is plainly obsolete, and all of it badly needs recodification and revision. Chapter 153, concerning counties, is in somewhat better condition but it dates basically from 1905 and also badly needs revision. This recommendation will take much time and labor to implement and cannot be accomplished by the 1969 General Assembly. Therefore we recommend that the 1969 General Assembly authorize our Commission to undertake this project for presentation to the 1971 General Assembly.

6. AMEND THE CONSTITUTION TO FORESTALL ANY QUESTION THAT THE GENERAL ASSEMBLY MAY DELEGATE LEGISLATIVE POWER TO LOCAL GOVERNMENTS. While we have strongly recommended against constitutional home rule, we do endorse the home rule concept so long as the General Assembly is free at any time to modify those matters committed to local discretion. There may be, however, some constitutional problems in delegating broad legislative powers to local governments in such matters as modification of the composition and mode of election of the governing board. In order to forestall these objections we recommend that a new Section be inserted into Article VII of the Constitution

as follows:

> "Unless this Constitution shall otherwise specifically provide, the General Assembly may delegate to counties, cities and towns the power to adopt, amend, and repeal local laws fixing the form of government of such units and exercising the police power subject to the guarantees of this Constitution and the Constitution of the United States."

III. HANDLING LOCAL LEGISLATION IN THE GENERAL ASSEMBLY

In Part II of this Report we have recommended legislation which should substantially reduce the volume of local legislation in the General Assembly and have asked for a complete revision and recodification of the general laws relating to local government in 1971 which should reduce the volume still further. However, the single most effective method of reducing local legislation is for the General Assembly to insist that local officials do not request local acts unless they are really needed, and for the General Assembly to adopt some method of determining the need for local bills. At the present time, local legislation is parceled out among three committees in each house which handle only local bills for the most part, and occasionally to committees which primarily handle public legislation. We believe that the present committee structure could be substantially improved to the end that such local legislation as is introduced is actually studied for technical accuracy, need, and constitutionality. Moreover, the committee structure could be such as to encourage consolidation of similar requests into one bill or to encourage enactment of general legislation on topics which seem to be generating large numbers of local bills in a particular session. To this end, we make the following recommendations:

1. WE RECOMMEND THAT ONE COMMITTEE IN THE HOUSE AND ONE COMMITTEE IN THE SENATE HANDLE LEGISLATION RELATING TO LOCAL GOVERNMENT, AND THAT THIS COMMITTEE BE ENTITLED THE LOCAL GOVERNMENT COMMITTEE.

2. WE RECOMMEND THAT THE HOUSE COMMITTEES ON COUNTIES, CITIES AND TOWNS, AND SALARIES AND FEES BE ABOLISHED AND THEIR JURISDICTION TRANSFERRED TO THE LOCAL GOVERNMENT COMMITTEE.

3. WE RECOMMEND THAT THE HOUSE COMMITTEE ON JUSTICES OF THE PEACE BE ABOLISHED AND ITS JURISDICTION TRANSFERRED TO THE COMMITTEE ON COURTS AND JUDICIAL DISTRICTS.

4. WE RECOMMEND THAT THE SENATE COMMITTEES ON COUNTIES, CITIES AND TOWNS, AND SALARIES AND FEES BE ABOLISHED AND THEIR JURISDICTION TRANSFERRED TO THE LOCAL GOVERNMENT COMMITTEE.

5. WE RECOMMEND THAT EACH HOUSE DEFINE A LOCAL BILL IN ITS RULES AS ANY BILL APPLYING TO SPECIFIC COUNTIES, CITIES OR OTHER UNITS OF LOCAL GOVERNMENT BY NAME.

6. WE RECOMMEND THAT THE LOCAL GOVERNMENT COMMITTEE IN EACH HOUSE HAVE NOT LESS THAN TWO VICE-CHAIRMEN, AND THAT EACH COMMITTEE ORGANIZE INTO TWO SUB-COMMITTEES, ONE HANDLING PRIMARILY BILLS OF A STATE-WIDE NATURE RELATING TO LOCAL GOVERNMENT, AND THE OTHER PRIMARILY HANDLING PURELY LOCAL BILLS.

7. WE RECOMMEND THAT EACH COMMITTEE OR EITHER OF ITS SUB-COMMITTEES BE AUTHORIZED TO MEET IN JOINT SESSION WITH ITS COUNTERPART IN THE OTHER HOUSE, RETAINING THE RIGHT TO VOTE SEPARATELY.

8. WE RECOMMEND THAT THE COMMITTEES STUDY LOCAL BILLS CLOSELY FOR ACCURACY, AND CALL TO THE ATTENTION OF THE INTRODUCER OF A LOCAL BILL OTHER STATUTES WHICH MIGHT RENDER THE BILL UNNECESSARY, UNCONSTITUTIONAL, OR UNWISE.

9. WE RECOMMEND THAT A STAFF ATTORNEY BE ASSIGNED TO THE CHAIRMAN OF THE LOCAL GOVERNMENT COMMITTEE IN EACH HOUSE, THAT THE WORK OF THE TWO ATTORNEYS BE COORDINATED, AND THAT THEIR PRIME RESPONSIBILITY BE TO RESEARCH LEGISLATION PREVIOUSLY INTRODUCED UNDER THE DIRECTION OF THE COMMITTEE CHAIRMEN. WE STRONGLY RECOMMEND THAT THE STAFF ATTORNEYS NOT ENGAGE IN DRAFTING LOCAL BILLS.

APPENDIX I

Local Acts Applying to Counties - 1967

Subject		Number of bills
Organization of the board of commissioners		54
Number and term of office	10	
Method of filling vacancies	6	
Per diem and allowances	26	
Election procedures	4	
Meeting place	4	
Salaries and fees		42
Salaries of elected and appointed officers	28	
Official fees	14	
Planning, zoning, and building inspection		15
Courts		28
Special districts, authorities, historical association		23
Local acts defining misdemeanors		57
Schools		87
Election of board of eduction	62	
Other school acts	25	
Law enforcement		6
Health		9
Sale of property		19
Finance and Taxation		93
Debt limit	1	
Special tax levies	17	
Apportioning ABC profits	5	
Property tax administration	39	
Authorizing appropriations	19	
Miscellaneous	12	
Miscellaneous		26
	TOTAL	478

Local Acts Applying to Cities and Towns - 1967

Subject	Number of bills
Structure and Organization	
Incorporation and dissolution	13
Form of city government	41
Election procedures	28
Compensation of officers	33
Qualification, appointment	4
Retirement, civil service	15
Comprehensive charter revisions	13
Finance	
Taxation and revenue	9
Expenditures	5
Tax collection	11
Special assessments	4
Planning, zoning, extension of limits	
Planning, zoning	24
Annexation	23
Powers and Functions	
Streets, traffic, and parking	11
Regulatory powers, other	9
Police jurisdiction	1
Local courts	7
Beer, wine, and liquor	29
Other functions	20
Purchasing	9
Sale of property	28
Schools	8
Miscellaneous	17
TOTAL	362

APPENDIX III

A BILL TO BE ENTITLED AN ACT GRANTING ORDINANCE-MAKING AUTHORITY TO COUNTIES.

The General Assembly of North Carolina do enact:

Section 1. G.S. § 153-9(55) is rewritten to read as follows:

"(55) To Adopt Ordinances for the Better Government of the County.--To adopt ordinances supervising, regulating, suppressing or prohibiting all things detrimental to the public health, morals, comfort, safety, convenience and welfare, including but not limited to authority to exercise any of the powers conferred on cities and towns by G.S. § 160-200. Such ordinances shall be applicable within the corporate limits or jurisdiction of cities and towns within the county unless the governing board of a particular city or town shall by ordinance specifically reject the county ordinance. County ordinances may be made effective at any time, but shall not take effect within the corporate limits or jurisdiction of the cities and towns within the county until 30 days after their effective date in order that the governing board of the city or town may determine whether or not it will reject the county ordinance. The board of county commissioners shall send a certified copy of any ordinance adopted under this subsection to the mayor of each city and town within the county within seven days after its adoption. Nothing herein shall affect the authority of local boards of health to adopt rules and regulations for the protection and promotion of public health.

The board of commissioners shall cause the clerk to the board to keep an ordinance book which shall be separate from the

commissioners' minute book and in which shall be recorded all ordinances adopted pursuant to this subdivision. No ordinance shall be effective until so recorded. The ordinance book shall be appropriately indexed and shall be available for public inspection either in the office of the clerk to the board or in the office of the Register of Deeds of the county. Failure to comply with the provisions of this paragraph shall be a defense to any criminal action under G.S. § 14-4 for violation of a county ordinance."

Sec. 2. G.S. § 14-4 is rewritten to read as follows:

"§ 14-4. Violation of local ordinances misdemeanor. If any person shall violate an ordinance of a county, city, or town he shall be guilty of a misdemeanor and shall be fined not more than $50 or imprisoned for not more than 30 days in the discretion of the court."

Sec. 3. All laws and clauses of laws in conflict with this act are repealed.

Sec. 4. This act shall take effect on July 1, 1969.

A BILL ENTITLED AN ACT AUTHORIZING THE BOARD OF COMMISSIONERS OF ANY COUNTY TO MODIFY THE COMPOSITION AND MODE OF ELECTION OF THE BOARD.

The General Assembly of North Carolina do enact:

Section 1. G.S. §§ 153-16, 153-17, 153-18, and 153-19 are repealed and the following sections inserted in lieu thereof:

"§ 153-16. Modification of form of government. (1) It is hereby declared to be the policy of the General Assembly that the board of commissioners of each county may alter the composition and mode of election of the board of commissioners for their county within the options and according to the procedures prescribed by this Article.

(2) The board may alter the number of members of the board of commissioners to any number not less than 3 nor more than 7.

(3) The board may alter the terms of office of members of the board of commissioners by adopting one of the following options:

(a) members of the board shall be elected for terms of two years;

(b) members of the board shall be elected for terms of four years;

(c) members of the board shall be elected for overlapping terms of four years.

If the board consists of three members and option (c) is adopted as hereinafter provided, at the first election following such adoption the member receiving the highest number of votes shall be elected for a term of six years, the member receiving the next highest number of votes for a term of four years, and the member elected with the lowest number of votes for

a term of two years. Thereafter, all candidates shall be elected for terms of four years. If the board consists of five or seven members and option (c) is adopted as hereinafter provided, at the first election following such adoption three members of a five-member board or four members of a seven-member board receiving the highest number of votes shall be elected for terms of four years and the remaining members for terms of two years. Thereafter, all candidates shall be elected for terms of four years. If the board consists of four or six members, and option (c) is adopted as hereinafter provided, at the first election following such adoption the two members of a four-member board and the three members of a six-member board receiving the highest number of votes shall be elected for terms of four years, and the remaining members shall be elected for terms of two years. Thereafter, all candidates shall be elected for terms of four years.

(4) The board may alter the mode of election of members of the board of commissioners by adopting one of the following options:

(a) all candidates shall be nominated and elected by all the qualified voters of the county;

(b) the county shall be divided into districts; commissioners shall be apportioned to the districts so that each member represents the same number of persons as near as may be, except for members apportioned to the county at large; the qualified voters of each district shall nominate candidates for the seats apportioned to that district; all the qualified voters of the county shall nominate candidates for seats apportioned to the county at large, if any; and all candidates shall be elected by all the qualified voters of the county;

(c) the county shall be divided into districts; commissioners shall be apportioned to the districts so that each member represents the same number of persons as near as may be, except for members apportioned to the county at large; the qualified voters of each district shall nominate and elect candidates for seats apportioned to that district; and all the qualified voters shall nominate and elect candidates for seats apportioned to the county at large, if any;

(d) the county shall be divided into districts; commissioners shall be apportioned to the districts so that each member represents the same number of persons as near as may be, except for members apportioned to the county at large; and candidates shall reside in and represent the districts according to the apportionment plan adopted, but all candidates shall be nominated and elected by all the qualified voters of the county.

(5) the board may alter the mode of selecting the chairman of the board of county commissioners by adopting one of the following options:

(a) the board shall select a chairman from among its membership to serve at its pleasure;

(b) chairmanship of the board of commissioners shall be a distinct and separate office with candidates for that office nominated and elected by all the qualified voters of the county separate and apart from other members of the board."

"§ 153-17. How change may be made. (a) The board of commissioners of any county may by resolution duly adopted alter the composition or mode of election of the board within any of the options set out in G.S. § 153-16. If the resolution provides for commissioner districts, it shall define the districts. Such resolution shall be passed for the first time not later than

180 days before a primary at which nominations for seats on the board of commissioners will be made. Upon adoption of such resolution for the first time it shall be published in some newspaper having a general circulation in the county at least once each week for three successive weeks and shall be posted at the courthouse door. Not more than three nor less than one week after adoption of such resolution for the first time the board shall hold a public hearing on the resolution. Notice of the hearing shall be published for three successive days in some newspaper having a general circulation in the county and shall be posted at the courthouse door. At the hearing any interested citizen shall be given an opportunity to be heard on the merits of the resolution. Not less than one week following the public hearing, the board shall reconsider the resolution and if it shall pass its second reading, it shall take effect for the next succeeding primary and general election, unless petitioned to a vote of the people as hereinafter provided.

(b) Upon receipt of a valid petition bearing the signatures of at least 10 per cent of the whole number of voters who participated in the last election for Governor in that county, any resolution adopted under authority of this Section shall not take effect until approved by the qualified voters of the county. The form of the petition shall be substantially as follows:

NORTH CAROLINA

_____ County

We, the undersigned duly qualified voters of _____ County, North Carolina, do hereby request that that certain Resolution of the Board of County Commissioners of _____ County, adopted _____, 19__, be submitted to the qualified voters of the County for their approval or disapproval.

If such a petition is received, the clerk to the board shall investigate the names on the petition and shall certify its validity or invalidity to the board of commissioners. No petition shall be valid unless it is received at least 30 days prior to the primary. If a valid petition is received, the resolution shall be submitted to the voters at the next succeeding general election and, if approved by a majority of the votes cast on the proposition shall take effect for the next primary and general election.

(c) The board of commissioners shall cause all resolutions adopted pursuant to this section to be recorded in an ordinance book which shall be separate and distinct from the commissioners' minute book, which book shall be appropriately indexed. The clerk to the board shall file a certified copy of all resolutions adopted pursuant to this section in the office of the Secretary of State within 30 days after adoption, or, if the resolution is submitted to a vote of the people, within 30 days after approval in the election."

Sec. 2. G.S. §§ 153-24 and 153-25 are repealed.

Sec. 3. All public, local, and special acts relating to the election of boards of county commissioners shall continue in full force and effect until altered in accordance with the procedures prescribed by this Act.

Sec. 4. All laws and clauses of laws in conflict with this Act are repealed.

Sec. 5. This Act shall take effect on July 1, 1969.

A BILL TO BE ENTITLED AN ACT AUTHORIZING THE BOARD OF COUNTY COMMISSIONERS OF THE SEVERAL COUNTIES OF THE STATE TO FIX THEIR COMPENSATION.

The General Assembly of North Carolina do enact:

Section 1. G.S. §§ 153-12 and 153-13 are repealed and the following section inserted in lieu thereof:

"153-13. Compensation of county commissioners. From and after the first day of July, 1969, the board of commissioners of any county may fix their own compensation at any figure which to them seems just and reasonable, but any increase in compensation shall not take effect until the next succeeding term of office for any individual seat on the board, except that a commissioner appointed to fill an unexpired term may receive the increased compensation in the discretion of the board."

Sec. 2. All public, local and special acts prescribing the compensation and allowances of boards of county commissioners shall remain in full force and effect until altered as provided by this Act.

Sec. 3. All laws and clauses of laws and all special or local acts in conflict with this Act are repealed.

Sec. 4. This Act shall take effect on July 1, 1969.

A BILL TO BE ENTITLED AN ACT AUTHORIZING THE QUALIFIED VOTERS OF THE SEVERAL CITIES AND TOWNS OF THE STATE TO AMEND THEIR CORPORATE CHARTERS CONCERNING THE MODE OF SELECTION OF THE GOVERNING BOARD.

The General Assembly of North Carolina do enact:

Section 1. Articles 21, 22 and 23 of Chapter 160 of the General Statutes of North Carolina are repealed.

Sec. 2. A new Article 21 is hereby inserted in Chapter 160 of the General Statutes of North Carolina as follows:

"Article 21

City Manager

"§ 160-291. Appointment of city manager. The governing body of any city or town may appoint a city or town manager, who shall be the administrative head of the municipal government, and shall be responsible for the administration of all departments. He shall be appointed with regard to merit only, and need not be a resident of the city or town when appointed. He shall hold office during the pleasure of the governing body and shall receive such compensation as it shall determine.

"§ 160-292. Power and duties of manager. The manager shall

(1) be the administrative head of the municipal government;

(2) see that within the municipality the laws of the State and the ordinances, resolutions, and regulations of the governing board are faithfully executed;

(3) attend all meetings of the governing board, and recommend for adoption such measures as he shall deem expedient;

(4) make reports to the governing board from time to time upon the affairs of the municipality, keep the governing board fully advised of the municipality's financial condition and its future financial needs;

(5) appoint and remove all heads of departments, superintendents, and other municipal employees, except the municipal attorney.

"§ 160-293. Appointment and removal of officers. Such municipal officers and employees as the governing body shall determine are necessary for the proper administration of the city shall be appointed by the manager, and any such officer or employee may be removed by him; but the manager shall report every such appointment and removal to the governing board at the next meeting thereof following any such appointment or removal."

"§ 160-294. Control of officers and employees. The officers and employees of the municipality shall perform such duties as may be required of them by the manager, under general regulations of the governing board."

Sec. 2. A new Article 22 is hereby inserted in Chapter 160 of the General Statutes of North Carolina as follows:

"Article 22

Modification of Form of Government

"§ 160-295. Governing board authorized to modify form of government. It is hereby declared to be the policy of the General Assembly that the governing board of each city and town may alter the composition and mode of election of the governing board of that city or town within the options and according to the procedures prescribed by this Article.

"§ 160-296. Permissible options. The following options may be adopted as hereinafter provided:

(1) Style and name of the municipality:

(a) The municipal corporations shall be styled the City of _____.

(b) The municipal corporation shall be styled the Town of _____.

(2) Style of the governing board:

(a) The governing board shall be styled the Board of Commissioners of the City/Town of _____.

(b) The governing board shall be styled the City/Town Council of the City/Town of _____.

(c) The governing board shall be styled the Board of Aldermen of the City/Town of _____.

(3) Terms of office of members of the governing board:

(a) The board shall be elected for terms of two years.

(b) The board shall be elected for terms of four years.

(c) The board shall be elected for overlapping terms of four years.

If the board consists of an even number of members, at the first election following adoption of option (c), one-half of the members shall be elected for terms of four years and one-half for terms of two years. If the board consists of an odd number of members, at the first election following adoption of option (c) a simple majority shall be elected for terms of four years and the remainder for terms of two years. Those members elected with the highest numbers of votes shall serve the four year terms and the remainder of the members

shall serve the two year terms. At all elections following the first election under option (c) members shall be elected for terms of four years.

(4) Number of members of the governing board:

(a) The board shall consist of any number of members not less than three nor more than twelve.

(5) Mode of election of members of the governing board:

(a) All candidates shall be nominated and elected by all the qualified voters of the municipality.

(b) The municipality shall be divided into wards; members of the board shall be apportioned to the wards so that each member represents the same number of persons as near as may be, except for members apportioned to the municipality at large; the qualified voters of each ward shall nominate and elect candidates for seats apportioned to that ward; and all the qualified voters of the municipality shall nominate and elect candidates for seats apportioned to the municipality at large, if any.

(c) The municipality shall be divided into wards; members of the board shall be apportioned to the wards so that each member represents the same number of persons as near as may be, except for members apportioned to the municipality at large; and candidates shall reside in and represent the wards according to the apportionment plan adopted, but all candidates shall be nominated and elected by all the qualified voters of the municipality.

(d) The municipality shall be divided into wards; members shall be apportioned to each ward so that each member represents the same number of persons as near as may be, except members

apportioned to the municipality at large, if any; the qualified voters of each ward shall nominate two candidates for each seat apportioned to that ward in a non-partisan primary, and the qualified voters of the entire municipality shall nominate two candidates for each seat apportioned to the municipality at large, if any; and all candidates shall be elected by all the qualified voters of the municipality.

(6) Primaries:

(a) There shall be no municipal primary but all candidates shall be elected at the regular municipal election;

(b) There shall be a non-partisan primary to nominate two candidates for each vacancy on the board to be filled at the regular municipal election;

(c) There shall be a primary at which each political party shall nominate one candidate for each vacancy on the board to be filled at the regular municipal election.

Options (a) and (c) may not be adopted by any municipality which has adopted option (d) of subsection (4) of this section.

(7) Selection of Mayor:

(a) The mayor shall be elected by all the qualified voters of the municipality for a term of two years;

(b) The mayor shall be elected by all the qualified voters of the municipality for a term of four years;

(c) The mayor shall be selected by the governing board from among its membership to serve for a term of two years or until his term of office on the board expires, whichever event first occurs.

" § 160-297. How change may be made. (a) The governing board of any municipality may by ordinance duly adopted alter the composition or mode of election of the board and the mayor, or may alter the name and style of the municipal corporation and the governing board within any of the options set out in G.S. § 160-296. If the ordinance provides for wards, it shall define the wards. Such ordinance shall be passed for the first time not later than 180 days before the municipal primary, if any, or not later than 180 days before the municipal election if there is no primary. Upon adoption of such ordinance for the first time it shall be published in some newspaper having a general circulation in the municipality at least once each week for three successive weeks, and shall be posted in at least two public places. Not more than three nor less than one week after adoption of such ordinance for the first time, the board shall hold a public hearing on the ordinance. Notice of the hearing shall be published for three successive days in some newspaper having a general circulation in the municipality, and shall be posted in at least two public places. At the hearing any interested citizen shall be given an opportunity to be heard on the merits of the ordinance. Not less than one week following the public hearing, the board shall reconsider the ordinance and if it shall pass its second reading, it shall take effect for the next succeeding primary and general election, unless petitioned to a vote of the people as hereinafter provided. The ordinance shall require only a simple majority of the board on either reading.

(b) Upon receipt of a valid petition bearing the signatures of at least 10 per cent of the whole number of voters who participated in the last municipal election, any ordinance adopted under authority of this Article shall not take effect until approved by the qualified voters of the municipality.

The form of the petition shall be substantially as follows:

NORTH CAROLINA

CITY/TOWN OF _____

We, the undersigned duly qualified voters of the City/Town of _____, North Carolina, do hereby request that that certain ordinance of the _____(governing body)_____ of the City/Town of _____ adopted _____, 19__, be submitted to the qualified voters of the City/Town for their approval or disapproval.

If such a petition is received, the municipal clerk shall investigate the names on the petition and shall certify its validity or invalidity to the governing board. No petition shall be valid unless it is received at least 30 days prior to the municipal primary, if any, or at least 30 days prior to the municipal election if there is no primary. If a valid petition is received, the ordinance shall be submitted to the voters at the next succeeding municipal election and, if approved by a majority of the votes cast on the proposition, shall take effect for the next municipal primary and election."

Sec. 2. All public, local, special or private acts relating to the election of the mayor and governing board of cities and towns shall remain in full force and effect until altered as provided by this Act.

Sec. 3. All laws and clauses of laws, and all local or special acts in conflict with this Act are repealed.

Sec. 4. This Act shall take effect on July 1, 1969.

A BILL TO BE ENTITLED AN ACT TO ALLOW THE GOVERNING BODIES OF THE SEVERAL CITIES AND TOWNS OF THE STATE TO FIX THEIR OWN COMPENSATION.

The General Assembly of North Carolina do enact:

Section 1. Chapter 160 of the General Statutes of North Carolina is amended by inserting a new section as follows:

" § 160-9.1. Governing body may fix its compensation. The governing body of any city or town in this State may fix its own compensation and allowances in such sums as it may deem just and reasonable, effective for the next succeeding term of office for any particular seat on the board. A member appointed to fillan unexpired term may receive any increase in compensation adopted before his appointment in the discretion of the board."

Sec. 2. All laws and clauses of laws in conflict with this act, and specifically all portions of municipal charters heretofore enacted which fix a maximum compensation for the governing bodies of cities and towns, are repealed, but members incumbent on the effective date of this act shall continue to receive the compensation and allowances now prescribed by law or ordinance for the remainder of their term of office.

Sec. 3. G.S. § 160-9 and 160-201 are hereby reenacted, and all portions of municipal charters fixing a maximum compensation for the mayor and any other municipal officer or employee are hereby specifically repealed.

Sec. 4. This act shall take effect upon its ratification.

A BILL TO BE ENTITLED AN ACT REMOVING COUNTY EXEMPTIONS FROM CERTAIN GENERAL STATUTES.

The General Assembly of North Carolina do enact:

Section 1. G.S. § 153-9(12a) is rewritten to read as follows:

"(12a) To Fix Fees Charged by County Officers.--To fix, in their discretion, all fees and commissions which may be charged by any county officers or employees for the performance of any service or duty permitted or required by law, except fees in the General Court of Justice and of the Register of Deeds fixed by general law. Such fees and commissions may be changed at any time. Action to fix fees and commissions shall be taken by resolution of the board of county commissioners."

Sec. 2. G.S. § 153-9 (35 1/2) and 153-9 (35 3/4) are repealed and a new subdivision inserted in lieu thereof as follows:

"(35 1/2). To Promote Farm Soil Conservation Work.--To levy taxes and appropriate other funds to promote soil and water conservation work. The special approval of the General Assembly is hereby given for the levy of special taxes for this purpose."

Sec. 3. The last paragraph of G.S. § 153-9(43) is repealed.

Sec. 4. The last sentence of G.S. § 153-10 is repealed.

Sec. 5. The last paragraph of G.S. § 153-10.1 is repealed.

Sec. 6. Subdivisions (3) and (4) of G.S. § 153-48.3 are rewritten to read as follows:

"(3) The salary of an officer elected by the people shall not be reduced during his term of office, unless the officer shall agree to such

reduction, or unless a reduction shall be ordered by the Director of Local Government under G.S. Ch. 159, Art. 4. This limitation shall not restrict the authority of county commissioners to fix fees charged by officers elected by the people even though such officer may be partially or wholly compensated by such fees."

Sec. 7. G.S. § 153-48.5 is repealed.

Sec. 8. The last sentence of G.S. § 153-40 is repealed.

Sec. 9. G.S. § 153-6 is amended to read as follows:

"§ 153-6. Vacancies in board; how filled.--In case of a vacancy occuring in the board of commissioners of a county, after consulting the county executive committee of the appropriate political party, the board shall appoint some person to serve the remainder of the term who is of the same political party as the member causing the vacancy."

Sec. 10. G.S. § 153-24 is repealed.

Sec. 11. G.S. § 160-61.1(c) is repealed.

Sec. 12. The last sentence and the provisos applicable to Lincoln and Catawba Counties of G.S. § 153-152 are repealed.

Sec. 13. G.S. § 153-294.19 is repealed.

Sec. 14. G.S. § 153-266.9 is repealed.

Sec. 15. G.S. § 153-266.22 is repealed.

Sec. 16. The last paragraph of G.S. § 153-9(47) is repealed.

Sec. 17. The last paragraph of G.S. § 153-9(52) is repealed.

Sec. 18. G.S. § 154-3 is repealed.

Sec. 19. The last sentence and the proviso of G.S. § 160-181.2 are repealed.

Sec. 20. G.S. § 160-181.10 is repealed.

Sec. 21. G.S. § 160-227.1 is repealed.

Sec. 22. The proviso of G.S. § 161-2 is repealed.

Sec. 23. All laws and clauses of laws and all special or local acts in conflict with this Act are repealed.

Sec. 24. This Act shall take effect on July 1, 1969.

APPENDIX IX

A BILL TO BE ENTITLED AN ACT REMOVING COUNTY EXEMPTIONS FROM THE MUNICIPAL ANNEXATION LAWS.

The General Assembly of North Carolina do enact:

Section 1. The proviso of G.S. § 160-453 is repealed.

Sec. 2. G.S. § 160-453.12 is repealed.

Sec. 3. G.S. § 160-453.24 is repealed.

Sec. 4. All laws and clauses of laws in conflict with this Act are repealed.

Sec. 5. This Act shall take effect on July 1, 1969.

A BILL TO BE ENTITLED AN ACT TO FIX A UNIFORM SCHEDULE OF FEES TO BE CHARGED BY THE REGISTERS OF DEEDS THROUGHOUT NORTH CAROLINA.

The General Assembly of North Carolina do enact:

Section 1. G.S. 161-10 is rewritten in its entirety to read as follows:

"§161-10. Uniform fees of registers of deeds.

(a) In the performance of his duties, the register of deeds shall collect the following fees which shall be uniform throughout the State:

1. Instruments in General: for registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be $2.00 for the first page, which page shall not exceed eight and one-half inches by fourteen inches, plus $1.00 for each additional page or fraction thereof. A page exceeding eight and one-half inches by fourteen inches shall be considered two pages.

2. Marriage Licenses: for issuing a license - $5.00; for issuing a delayed certificate with one certified copy - $5.00; and for a proceeding for correction of names in application, license or certificate, with one certified copy - $5.00.

3. Plats: for each original or revised plat recorded - $5.00; for furnishing a certified copy of a plat - $2.00.

4. Right-of-way Plans: for each original or amended plan and profile sheet recorded - $5.00. This fee is to be collected from the State Highway Commission.

5. Registration of birth certificate four years or more after birth: for preparation of necessary papers when birth to be registered in another county - $2.50; for registration when necessary papers prepared in another county, with one certified copy - $2.50; for preparation of necessary papers and registration in the same county, with one certified copy - $5.00.

6. Amendment of Birth or Death Record: for preparation of amendment and effecting correction - $1.00.

7. Certified Copies: for furnishing a certified copy of any instrument for which no other provision is made by this section - $1.00 per page or fraction thereof.

8. Comparing Copy for Certification: for comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof - $1.00.

9. Uncertified Copies: When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplies and the cost of purchasing and maintaining copying equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be prominently posted in his office.

10. Acknowledgment: for taking an acknowledgment, oath, or affirmation or for the performance of any notarial act - $.50. This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing or recording

instruments or plats as provided by items one and three of this subsection.

11. Liens for Internal Revenue: for recording a federal tax lien - $2.00; for filing a certificate of discharge - $2.00. These fees are to be collected from the United States.

12. Uniform Commercial Code: Such fees as are provided for in Chapter 25, Article 9, part 4, of the General Statutes.

13. Torrens Registration: such fees as are provided in G.S. 43-5.

14. Master Forms: such fees as are provided in G.S. 47-21.

15. Probate: for certification of instruments for registration as provided in G.S. 47-14 - $.50.

(b) The uniform fees set forth in this section are complete and exclusive and no other fees shall be charged by the register of deeds.

(c) These fees shall be collected in every case prior to filing, registration, recordation, certification or other service rendered by the register of deeds unless by law it is provided that the service shall be rendered without charge."

Section 2. G.S. 161-11 is rewritten in its entirety to read as follows:

"§161-11. Per diem as clerk to the board of county commissioners.--The register of deeds shall be allowed, while and when acting as clerk to the board of county commissioners, such per diem as the board may allow."

Section 3. G.S. 130-70 is amended by striking the last sentence thereof which is as follows:

"The register of deeds may make duplicates, copies or abstracts of such records, for which he shall be entitled to a fee of fifty cents (50¢) per copy."

Section 4. G.S. 153-9(12a), as the same appears in the supplement to Volume 3C of the General Statutes, is amended by striking therefrom the words and comma "registers of deeds,".

Section 5. G.S. 161-22.1 is amended by striking therefrom the last paragraph thereof which is as follows:

"For indexing and cross-indexing as grantors the names of persons described in this section, the register of deeds shall be allowed a fee of ten cents (10¢). The provisions of this section shall not be construed to repeal any local act, fixing a different fee for such indexing or cross-indexing."

Section 6. G.S. 161-10.1, G.S. 161-10.2, G.S. 2-28 and G.S. 51-20 are repealed.

Section 7. G.S. 161-25 is amended by striking therefrom the last sentence thereof which is as follows:

"Upon payment of a fee of one dollar the register of deeds or county auditor shall furnish to anyone making application therefor a certified copy of said list of statutes."

Section 8. G.S. 130-56 is amended by striking therefrom the last paragraph thereof which is as follows:

"The register of deeds shall be entitled to a fee of one dollar ($1.00) for such registration, to include the issuance of one certified copy, and a fee of fifty cents (50¢) for each additional certified copy issued by him, to be paid by the applicant."

Section 9. G.S. 130-57 is amended by striking therefrom the last sentence of the first paragraph which is as follows:

"The register of deeds shall be entitled to a fee of fifty cents (50¢)

for each acknowledgment, oath, affirmation, or other notarial act performed by him, when such acknowledgment, oath, affirmation, or other notarial act is sealed with his official seal, such fee or fees to be paid by the applicant."

Section 10. G.S. 44-66 is rewritten in its entirety to read as follows:

"When a notice of such tax lien is filed, the register of deeds shall forthwith enter the same in alphabetical federal lien tax index to be provided by the board of county commissioners, showing on one line the name and residence of the taxpayer named in such notice, the collector's serial number of such notice, the date and hour of filing, and the amount of tax and penalty assessed. He shall file and keep all original notices so filed in numerical order in a file or files to be provided by the board of county commissioners and designated federal tax lien notices. The fees provided by G.S. 161-10 for the filing of notices and certificates shall be charged to the United States."

Section 11. G.S. 47-113 is rewritten in its entirety to read as follows:

"Any person desiring a certified copy of any such discharge, or certificate of lost discharge, registered under the provisions of this article shall apply for the same to the register of deeds of the county in which such discharge or certificate of lost discharge is registered. The register of deeds shall furnish certified copies of instruments registered under this article without charge to any member or former member of the armed forces of the United States who applies therefor."

Section 12. G.S. 51-21 is amended by striking the last paragraph thereof which is as follows:

"The register of deeds shall issue the certificates provided for in this section upon the payment of a fee of one dollar and fifty cents ($1.50) for each such certificate."

Section 13. G.S. 136-19.4(e), as the same appears in the supplement to Volume 3B of the General Statutes, is rewritten to read as follows:

"(e) The register of deeds in each county shall collect a fee from the State Highway Commission of five dollars ($5.00) for each original or amended plan and profile sheet recorded."

Section 14. Nothing in this Act shall prevent any register of deeds whose compensation is derived from fees from retaining those fees as heretofore provided by law except that the amount of such fees shall be determined as provided herein.

Section 15. All laws and clauses of laws in conflict with the provisions of this Act, including the portions of all local laws setting the fees of registers of deeds or authorizing the county commissioners to set the fees, are hereby repealed.

Section 16. This Act shall be in full force and effect from and after July 1, 1969.

V

CONTINUATION OF THE COMMISSION

V

CONTINUATION OF THE COMMISSION

As we indicated in the beginning of this Report, it was not possible for us to adequately investigate all the topics assigned to us by Resolution 76 of the 1967 General Assembly. Much work remains to be done. For example, we have recommended a complete recodification and revision of all the general statutes concerning local government. This project alone could occupy a commission for two years and there are other matters which we feel should be studied such as metropolitan local government. Also, if the General Assembly submits to the people our recommended amendments to Article V of the Constitution, some group should be on hand to direct the campaign for ratification. For these reasons WE RECOMMEND THAT THE LOCAL GOVERNMENT STUDY COMMISSION BE CONTINUED FOR ANOTHER BIENNIUM, and are including a Joint Resolution to that effect.

A JOINT RESOLUTION CONTINUING THE LOCAL GOVERNMENT STUDY COMMISSION

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Local Government Study Commission established by Resolution 76 of the Session Laws of 1967 is hereby continued in existence through January 1, 1971. The Commission shall consist of three Senators appointed by the President of the Senate, six Representatives appointed by the Speaker of the House, and six citizens appointed by the Governor. The Commission shall select its own chairman and such other officers as it may deem necessary.

Sec. 2. The members of the Commission shall be appointed as soon after the adjournment of the General Assembly as is practicable, and shall serve until the report of the Commission is filed with the Governor.

Sec. 3. The Commission shall continue to study those matters assigned to it by Sec. 3, Resolution 76, of the Session Laws of 1967, and shall report its findings and recommendations to the Governor and General Assembly of 1971 and shall make publication of the same not later than January 1, 1971.

Sec. 4. The members of the Commission shall receive while engaged in the service of the State the per diem, travel, and subsistence allowances prescribed in G.S. § 138-5. The Commission may employ such assistance and procure such materials and services as it deems necessary to the performance of its duties, and may accept and expend the proceeds of any gift, donation, or grant from any person, firm, corporation, foundation, or governmental agency. The expenses of the Commission shall be paid from the Contingency and Emergency Fund pursuant to G.S. § 143-12 and any other funds available to the Commission. Every agency of State, county, and municipal government shall provide the Commission with such information and assistance as may be requested by the Commission, as provided in Chapter 120 of the General Statutes of North Carolina.

Sec. 5. This Resolution shall take effect July 1, 1969.